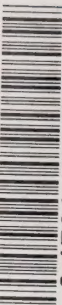


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Ontario Legal Commission enquiry into  
labour disputes.

Hearings. Volume 5. January 1967













ROYAL COMMISSION  
INQUIRY INTO LABOUR DISPUTES

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HEARINGS HELD AT  
Toronto, Ont.

VOL. NO.

5

DATE

18 Jan. 1967

*Official Reporters*

NETHERCUT & YOUNG LIMITED  
48 YORK STREET  
TORONTO 1, ONTARIO  
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Nethercut & Young

Toronto, Ontario

IN THE MATTER OF The Public  
Inquiries Act, R.S.O. 1960,  
Ch. 323

- and -

IN THE MATTER OF an Inquiry  
Into Labour Disputes

BEFORE: The Honourable Ivan  
C. Rand, Commissioner,  
at 123 Edward Street,  
Toronto, Ontario, on  
Wednesday, January 18,  
1967.

E. Marshall Pollock

Counsel to the Commission

APPEARANCES:

The Bakery Council of  
Canada 394

Mr. Roy Filion

Vice-President, Industrial  
Relations, General Bakeries  
Limited

Mr. Robert Flavelle

Industrial Relations  
Counsellor, acting on behalf  
of Weston Bakeries Limited

Mr. C. St. Pierre

Manager, Industrial  
Relations, Canada Bread  
Company Limited

Mr. J. Stevenson

Manager, Labour Relations,  
Christie's Bread, Division  
of Nabisco Ltd.

Mr. P.K. Large

Managing Director, Bakery  
Council of Canada

Mr. George S.P. Ferguson, Q.C.)

and

) Legal Counsel

Mr. B. Paulin

)







APPEARANCES:

Ontario Chamber of Commerce

Mr. F.H. Howard

First Vice-President

Mr. C.J. Clark, Q.C.

Chairman, Employer-Employee  
Relations Committee

Mr. G.S.P. Ferguson, Q.C.

Member, Employer-Employee  
Relations Committee

Mr. B.M.W. Paulin

Counsel

Mr. T. J. Masters

Member, Employer-Employee  
Relations Committee

Mr. J.A. Collins

Manager







1/FN/SS 1

---On commencing at ten o'clock a.m.

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MR POLLOCK: The Bakery Council of Canada. Mr. Ferguson, before you make your remarks I might say that both the Commissioner and I have read the brief with some interest and although it is not a lengthy brief we are leaving the presentation up to yourselves and whether you want to read parts of it or paraphrase parts of it or some parts of it and raise the points seriatim as they appear or in importance. We do not wish in any way to restrict the manner of your presentation.

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MR. FERGUSON: Thank you, Mr. Pollock. I want to say that for the purposes of free and frank conversation I do not intend to read our presentation, but I would like to summarize what we have covered so that it perhaps might get all of our minds into focus for the purpose of the questions.

19

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21

22

I think it best, though, if I may first of all introduce the associates who are with me today so that you, sir, will be familiar with them and with the status which they occupy in the industry.

23

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25

26

The first person I would like to introduce is Mr. Roy Fillion who is Vice-President, Industrial Relations of General Bakeries Limited, Mr. Fillion is on my far right.

27

28

29

30

Next, Mr. Robert Flavelle who is an Industrial Relations Counsellor and who has been acting on the Labour Relations Committee of the Bakery Council of Canada for and on behalf of Weston Bakeries







1 Limited.

2 Now, moving on my left I have Mr. C.  
3 St. Pierre who is Manager of Industrial Relations of  
4 Canada Bread Company Limited.

5 In the back I have Mr. J. Stevenson  
6 who is Manager of Labour Relations for Christie's  
7 Bread, a Division of Nabisco Ltd., and Mr. Peter Large  
8 who is the Managing Director of the Bakery Council of  
9 Canada.

10 On my immediate left I have Mr.  
11 Bradshaw Paulin who is one of my partners and who  
12 kindly came with me this morning to assist in any  
13 questioning in view of the fact that he has had a very  
14 extensive experience in matters of injunctions as an  
15 active practitioner in the field of labour relations.

16 I would like to state that the  
17 Bakery Council of Canada finalized its submission to  
18 you through the existence of a Labour Relations  
19 Committee and the men I have referred to were active  
20 on that committee. All of them have had extensive  
21 practical experience in the field of labour relations  
22 in their own industry. Mr. Flavelle, of course, has  
23 had experience in other wide areas as well as the  
24 bakery industry, but I want to assure you that they  
25 are all here to describe for you or to discuss with  
26 you any aspect of collective bargaining from a practical  
27 viewpoint, not in theory, not as an academic question,  
28 but they are persons who have lived with it on a day-to-  
29 day basis. We do not appear here to hedge about any  
30 matters. We would like to deal with them very frankly







1 with you and we welcome indeed the opportunity to be  
2 here.

3 Just to have our minds directed  
4 ourselves to our own submission and perhaps for the  
5 purposes of any questions I want to analyze what we  
6 have tried to tell you. We have described the general  
7 process of collective bargaining carried on in our  
8 industry and we have concluded in our submission that  
9 there is a degree of failure on the part of current  
10 conciliation procedures to bring about reasonable,  
11 equitable settlements in our industry. We have  
12 analyzed the existence of competitive unionism and the  
13 problems which flow from the multiplicity of collective  
14 bargaining agreements now in our industry. We have  
15 given you an example of the problems encountered by  
16 one single employer with the multiplicity of agreements,  
17 even with competitive unions.

18 We have tried to analyze the makeup  
19 of our industry and how there have been dramatic  
20 changes in our industry and how these relate to the  
21 industrial relations problems. These changes have  
22 affected the competitive position of the companies  
23 themselves and we have noted that these companies who  
24 appear before you enjoy a concentrated or large  
25 market. We have analyzed the types of collective  
26 agreements entered into by one employer and we have  
27 related that to the types of competition between  
28 different unions.

29 We have tried to analyze the types of  
30 negotiations which have been carried on by the employers





1 and the frustrations which have been encountered by  
2 the employers in this process of collective bargaining.  
3 We have emphasized the existence of two alternatives  
4 in our process of collective bargaining --- one, where  
5 there appears to be a speeding up of the process to  
6 drive the employer to a strike position or, the second  
7 alternative, where in the decision the union tries to  
8 drag out negotiations. We, sir, support the policy of  
9 the Department of Labour in increasing the authority of  
10 the conciliation officers and reducing the number of  
11 conciliation boards.

12 We have dealt at some length, sir,  
13 with our honest belief that some unions in our industry  
14 have not bargained in good faith and we have tried to  
15 give you some examples, typical examples of union  
16 attitudes which are displayed before us in collective  
17 bargaining.

18 We are not here to condone, if there  
19 ever is in our industry, a lack of bargaining in good  
20 faith on the part of the employer. We are not here to  
21 seek any shield for the employer. These employers must  
22 be responsible.

23 We have dealt at some length with the  
24 submission as well about the current process of  
25 conciliation in our province. We have tried to divide  
26 the stages and to describe it. We express great  
27 concern, as you know, over the failure of conciliation  
28 boards to submit recommendations for settlement. We  
29 are extremely disturbed about that when those boards  
30 have failed to bring about a settlement. We recommend,







1 sir, as you know, that these boards be given a  
2 responsibility of submitting a report and we specifically  
3 ask that these reports deal with the question of  
4 bargaining in good faith.

5 We also relate that to the office of  
6 the conciliation officer. We are disturbed about the  
7 lack of reports from conciliation officers, the fact  
8 that these reports are not made public and we recommend  
9 that the officer as well have the right and the duty to  
10 deal with this question of bargaining in good faith.

11 We believe that by giving to the  
12 board or the officer the right to deal with this  
13 question and bringing about some effective power on the  
14 part of this board or officer that there will come  
15 about far more effective labour relations and  
16 collective bargaining in our industry. We do not deal  
17 with the mechanics of how this could be done, whether  
18 the report of the officer or the report of the board  
19 could become an order of the Labour Relations Board.  
20 We do not deal with the mechanics of it, but we are  
21 genuinely concerned in a better method to have more  
22 fruitful and more responsible collective bargaining.  
23 That is all we seek and therefore by giving more  
24 authority to these boards or this officer we believe  
25 that this will bring about a situation where both union  
26 and management will bargain in good faith when their  
27 use of economic strength may be seriously prejudiced  
28 if they fail to do so.

29 We oppose, sir, the campaign of the  
30 unions to eliminate the use of injunctions. We must,







1 because of the circumstances in our industry and the  
2 Bakery Council has tried to deal with their industry.  
3 We have not tried to take the other representations  
4 made to you by so many other industries and tried to  
5 relate them to our own industry: we deal with our own  
6 problems. Time is of the essence for us as employers  
7 if we are faced with a strike, with picketing of any  
8 unlawful nature. We reconfirm the fact --- this is not  
9 only an opinion of all of us, this must be my opinion  
10 as a lawyer and I am sure Mr. Pollock's ---- that any  
11 employer who seeks an injunction must appear before the  
12 court with clean hands and he must use documentary  
13 evidence of the highest standards. But we say that  
14 because of the fact that time is of the essence for our  
15 industry the only immediate relief which may be sought  
16 by us whenever required is the means of obtaining an  
17 injunction.

18 We are opposed to laws or regulations  
19 which place additional powers in the hands of the  
20 Ontario Labour Relations Board. We are fearful of the  
21 extension of powers of administrative tribunals,  
22 Although in a few instances we have suggested that  
23 there should be some clarification of those powers or  
24 some specific commitment where the public will know  
25 we are concerned, though, about unpublished policies,  
26 unknown procedures and we are concerned about delays.  
27 Quite frankly, it appears to us, as I am sure you will  
28 hear from other management groups, there has been much  
29 criticism of the courts by the trade union movement,  
30 principally the trade union leaders. We do not hear





1 criticism of the courts by the trade union members or  
2 by the members of the public generally. To date there  
3 does not appear to have been a great deal of criticism  
4 levelled at the Ontario Labour Relations Board, but we  
5 would be fearful if there were additional powers  
6 generally placed in the hands of that Board.

7 We would not object, as we have  
8 stated, if in the process of obtaining an injunction  
9 we were obliged to give some form of notice to the  
10 union interested in a dispute and without dealing with  
11 the mechanics we only say that there must be some means  
12 then of giving notice which will not prejudice our  
13 requirement for immediate relief. There are undoubtedly  
14 substantial dangers faced by the employer in having to  
15 give notice to a group of individuals who may be  
16 engaged in unlawful forms of picketing. Undoubtedly  
17 there may be validity to any claim if on any occasion  
18 an injunction was sought and obtained on flimsy material.  
19 But we cannot accept and we do not accept the statement  
20 of Mr. Archer made before you and by the Ontario  
21 Federation of Labour that injunctions generally have  
22 been sought and obtained on flimsy material. We cannot  
23 accept that. Our experience in the courts has been  
24 that there has been by the members of the court  
25 extremely careful serious scrutiny of all of the  
26 material and our experience has been, sir, that while  
27 the right to cross-examine on the material is granted  
28 to unions and to union counsel they do not see fit to  
29 exercise that right, and on most occasions when we have  
30 been involved we have found that counsel to the unions







1 have consented to some form of order being granted by  
2 the court.

3 Notwithstanding all of those facts,  
4 as long as we have immediate relief we would be  
5 satisfied to give it some form of short-term notice so  
6 long as the means of applying to the court is still  
7 available to the employer who with clean hands does  
8 seek relief to remove unlawful picketing.

9 You have noticed, I am sure, sir, in  
10 our brief that we as an industry have not been  
11 harrassed with a lot of unlawful strikes, unlawful  
12 picketing. We have not suffered from a rash of  
13 arbitration cases, unwarranted grievances, so as we  
14 say on the surface it may appear that collective  
15 bargaining, the process as we know it today, works in  
16 our industry. But there are other factors, principally  
17 the question of good faith which has caused us a good  
18 deal of difficulty and those form the basis of our  
19 very specific recommendations to you.

20 Now, sir, that, I believe, outlines  
21 the thinking of the Bakery Council and I hope it will  
22 lead us to an opportunity of having discussion on any  
23 of those matters with you.

RJY/SS 24 THE COMMISSIONER: You were speaking  
25 of immediacy, immediate relief: Have you had any  
26 actual experience where you went through a course of  
27 action that did call for immediate relief?

28 MR. FERGUSON: Yes, we have had many  
29 instances, not only related to the bakery industry,  
30 but we gave one example to you in our submission in







1 regard to a bakery in London. In that particular case  
2 there was a group of salesmen who were attempting to  
3 obtain from one of the companies immediate recognition  
4 for their organization. These people were driver-  
5 salesmen. These people had generated the sympathy and  
6 active support of the Teamsters' Union. These people  
7 threw up a picket line in the London depot of this  
8 company. The Teamsters who were engaged in delivery of  
9 the perishable product immediately refused to work at  
10 the London depot. The affairs of management as a  
11 result of this picketing, which was peaceful picketing,  
12 I believe, but it led to some minor forms of violence....

13 THE COMMISSIONER: It was not unlawful  
14 picketing?

15 MR. FERGUSON: It was not lawful  
16 picketing.

17 MR. POLLOCK: It wasn't lawful in the  
18 sense that it was recognition picketing.

19 MR. FERGUSON: That is correct. It  
20 immediately brought about the crippling of the operation  
21 of the company in London. In that case we had to seek  
22 immediate relief through the process of applying to the  
23 court. Mr. Paulin was involved in that particular case  
24 and we filed the material with the court, and I believe  
25 either on the same day or the day immediately thereafter  
26 he obtained an injunction from the court so that the  
27 operations of the company could go ahead.

28 THE COMMISSIONER: Take the question  
29 of your immediate application: It would take you some  
30 time to prepare these statements by affidavit, wouldn't





1 it?

2 MR. PAULIN: May I answer with  
3 regard to this? The picketing of this plant, sir,  
4 began at eight o'clock on Friday evening. This is a  
5 24-hour, seven-day week operation ---- at least a seven-  
6 day week operation, and I was contacted by the company  
7 concerned and arrived at the plant at midnight. There  
8 was a large number of pickets who were forcibly trying  
9 to prevent vehicles from coming in, and the London City  
10 Police were on hand and they kept order to a large extent,  
11 but none of the employees and the two bargaining units  
12 in the camp would cross the picket line.

13 THE COMMISSIONER: Nothing had been  
14 done --- had the contract come to an end?

15 MR. PAULIN: There was not any, sir.  
16 This was recognition picketing. As a matter of  
17 interest, the Labour Relations Board had earlier  
18 declared that this precise group of employees were  
19 independent contractors and therefore not under the  
20 Labour Relations Act. This decision was made some  
21 time earlier.

22 MR. POLLOCK: So that in effect they  
23 could not be recognized by the Labour Relations Board.

24 MR. PAULIN: They were not  
25 certifiable under the Labour Relations Act. In any  
26 event, I worked on that one most of the night and  
27 early Saturday morning I made an appointment with a  
28 judge who had declined jurisdiction, the local judge,  
29 because he had been sitting that morning on a meeting  
30 of the London Police Commission and had acquired some  
information about this, but he was kind enough to invite







1 another judge to London whom I saw that Saturday  
2 afternoon in the Court House and I obtained an ex parte  
3 injunction on the basis of affidavit material which I  
4 had prepared very early Saturday morning and Saturday  
5 afternoon.

6 THE COMMISSIONER: Do the rules  
7 allow you to introduce oral evidence in such an  
8 application?

9 MR. PAULIN: They do, but it is  
10 extremely rare for this to be done.

11 THE COMMISSIONER: But if they do,  
12 why would it not be more effective?

13 MR. PAULIN: Well, sir, this was on  
14 the Saturday.

15 THE COMMISSIONER: Well, suppose it  
16 was.

17 MR. PAULIN: A reporter was not  
18 available to take down the evidence and we had the  
19 greatest difficulty even getting into the Court House  
20 on the Saturday afternoon. The rules make provision  
21 for this, but at the same time there must be a  
22 transcript, as I understand the rules, and there was  
23 just no time really to set all of this up. We had to  
24 get this put together as quickly as we could because  
25 there were very substantial damages being suffered by  
26 the company.

27 THE COMMISSIONER: I quite appreciate  
28 that, but I was just wondering, is there any requirement  
29 that evidence on an application of that sort be taken  
30 by a reporter?





1 MR. PAULIN: I cannot answer you, sir,  
2 from my recollection of the rules. I think the rules  
3 specifically state, the rules of court specifically  
4 state that on a motion of this kind the evidence shall  
5 be by affidavit. Then there is provision given in the  
6 rules for leave in special and very rare cases, I may  
7 say, to call viva voce evidence.

8 THE COMMISSIONER: What I have in mind  
9 is this: The essence of your criticism is in the first  
10 place that you have affidavits on the basis of information  
11 and belief, and that is said to be inadequate. Then  
12 there is the question of notice. It seems to me those  
13 items of procedure are not so vital that they cannot be  
14 met by some means or other, and it would occur to me  
15 that if you could take, for instance, two or three men  
16 who have seen all of this and present that evidence to  
17 a judge, it would not take more than fifteen minutes to  
18 do. It would be an answer to all of this, with notice,  
19 and you can give that notice by telephone or by any  
20 means at all in such a situation.

21 MR. PAULIN: That could be done, sir,  
22 but at the same time there is very little affidavit  
23 material, at least that I am familiar with, which sets  
24 out the facts on which the plaintiff relies on the  
25 information and belief of the deponent.

26 THE COMMISSIONER: That has been  
27 levelled as a criticism.

28 MR. PAULIN: It is not one to which I  
29 would accept that criticism, with great respect, because  
30







1 if I have an affidavit that I filed, and if there is  
2 anything in the affidavit which says the deponent is  
3 informed and believes that something happened, then this  
4 is usually of the fact that he was informed there was  
5 a strike and then he went down there and there was  
6 picketing, and he says in his affidavit what he saw and  
7 what he observed.

8 THE COMMISSIONER: And your practice  
9 is to have a man give an affidavit on what he knows.

10 MR. PAULIN: Oh, certainly, sir.

11 THE COMMISSIONER: Apparently the  
12 rule allows you to use an affidavit on that basis.

13 MR. PAULIN: It does, but I should  
14 say on the basis of the experience I have had before  
15 the judges of the Supreme Court of Ontario that you  
16 would be most unlikely to get your order if you relied  
17 entirely on information and belief --- most unlikely.  
18 I may also say that it is extremely rare to have  
19 counsel acting for the union, which is really the  
20 defendant in the action, cross-examine on any of this  
21 material.

22 THE COMMISSIONER: That is on the  
23 motion for a continuation?

24 MR. PAULIN: Yes. The ex parte  
25 injunction is not used that frequently. In my  
26 experience, it is used in cases of recognition and  
27 picketing of the sort we have here. It may be used in  
28 cases of secondary picketing and it may be used in cases  
29 of a lawful strike where there are great excesses of  
30 behaviour on the picket line. But in all other cases the





1 ex parte injunction is not used. I may say, getting  
2 back to this London incident, when the motion for  
3 continuing that ex parte injunction was returnable,  
4 counsel appeared for the defence and did not oppose the  
5 order going. There was, of course, an action for  
6 damages commenced along with that.

7 THE COMMISSIONER: Did they give any  
8 reasons for not opposing it?

9 MR. PAULIN: He did not, no. I asked  
10 him --- this was in the summer and it was the vacation  
11 of the weekly court which begins an hour earlier than  
12 usual and he had mistaken the time and was late, and  
13 we had waited for him for some time. He just arrived  
14 to say that he was not opposing the making of the  
15 order, and he left. I did not have a chance to discuss  
16 it with him.

17 THE COMMISSIONER: Have you had  
18 experience in relation to other establishments with  
19 injunctions?

20 MR. PAULIN: Yes, I have, sir.

21 THE COMMISSIONER: Would you say  
22 that the original affidavits by which an ex parte  
23 injunction have been obtained, that the matter has ever  
24 been challenged subsequently in any form?

25 MR. PAULIN: No, none in my  
26 experience. I know of only one reported case in Ontario  
27 which I think was in 1952 or 1954 where a reference  
28 was made to assess the damages of the defendants  
29 because the ex parte injunction order had been improperly  
30 obtained. I know of only one case.







1 THE COMMISSIONER: So then, from your  
2 experience we can say that although these affidavits  
3 have been criticized as being open to information  
4 and belief, in no case that you know of, except that  
5 one case, have the facts which have been set forth  
6 been challenged at any subsequent time.

7 MR. PAULIN: No, sir, I know of no  
8 other case except that one.

9 THE COMMISSIONER: And it is necessary  
10 within two days, is it, to move for a continuation?

11 MR. PAULIN: The ex parte injunction  
12 order under Section 17 of our Judicature Act provides  
13 that the order may be for a maximum of four days. This  
14 is in the case of a labour dispute within the definition  
15 of that particular section. Of course, two days'  
16 notice must be given on the motion to continue the  
17 injunction until the trial of the action.

18 THE COMMISSIONER: Do you have any  
19 difficulty in serving notice at all because of your  
20 want of knowledge of who the officers may be or who  
21 represents the union?

22 MR. PAULIN: Under our practice, sir,  
23 one cannot obtain an injunction without first having  
24 commenced an action although the order can be made in  
25 an emergency in the matter of an intended action and  
26 one must commence issuing writ, but sometimes one has  
27 the greatest difficulty in ascertaining who to sue,  
28 because, as you know, sir, a trade union may not be  
29 sued as an entity in this jurisdiction. Trade union  
30 officials, many of them are quite familiar with the law,





1 and they will import people in many cases -- strangers  
2 to picket a plant with instructions not to disclose  
3 their names and addresses and sometimes it is almost  
4 virtually impossible to find out who these people are,  
5 and then one is left sometimes almost with no defendants,  
6 and in desperation you might sue the business agent of  
7 the local union who is causing this difficulty. The  
8 police forces in the province have a practice, when a  
9 picket line appears, of doing their best to ensure at  
10 the outset that nothing will erupt so far as they can.  
11 They will ask these people who they are, what their  
12 names and addresses are, and they will give them to the  
13 police, but the police in turn have been instructed by  
14 the Attorney General to keep that information entirely  
15 for police purposes, so we have to use our own devices  
16 in order to find out who these men are.

17 THE COMMISSIONER: What would you  
18 suggest? This court procedure is more or less  
19 established for some time yet, and all I am doing is  
20 speculating in possibilities. What would you say to  
21 having a matter of that sort dealt with by a strictly  
22 labour court in which you would have the same indepen-  
23 dence and qualification as you have in the Supreme  
24 Court, but in which, for instance, you would not have  
25 to commence an action; you could make an immediate  
26 application, say, for a restraining order or a desist  
27 order or something of that sort.

28 MR. PAULIN: Do you envisage a  
29 division of the court something similar to a bankruptcy  
30 court?







1 THE COMMISSIONER: Not necessarily a  
2 court --- an independent labour court.

3 MR. PAULIN: Then we would be in a  
4 position, if we could go there to get an injunction  
5 perhaps, but without commencing an action. This is a  
FJn/SS 6 sort of administrative tribunal you are talking about.  
7 I would be opposed to that, with great respect, sir.

8 THE COMMISSIONER: Why?

9 MR. PAULIN: I may say that the  
10 Supreme Court of Ontario has jurisdiction in injunction  
11 matters. Well, it just has complete jurisdiction in  
12 injunction matters.

13 THE COMMISSIONER: There is nothing to  
14 prevent the Province of Ontario from giving jurisdiction  
15 to another court in certain cases.

16 MR. PAULIN: No, sir, that is true,  
17 but I was going to say there are more substantial  
18 rights perhaps and more substantial matters affected  
19 in injunction matters other than labour in the courts  
20 every day.

21 THE COMMISSIONER: But they arise out  
22 of labour matters. In this case the question does arise  
23 out of a labour matter.

24 MR. PAULIN: That is quite true.  
25 From my own point of view I have the greatest respect  
26 for the courts and the greatest respect for the  
27 probity of the judges. I believe that they have  
28 unfortunately had levelled against them a great deal  
29 of criticism which in some cases has been outrageous  
30 and unwarranted. The system that we have now, admittedly





1 is not perfect --- there is no question that it is  
2 perfect, I don't argue that it is.

3 THE COMMISSIONER: Well, what would  
4 you say would be perfect?

5 MR. PAULIN: In order to try to find  
6 something in the law which is perfection is something  
7 which I have just recently learned, perhaps in the last  
8 few years, to abandon because the law is not an exact  
9 science, sir.

10 THE COMMISSIONER: Of course not.  
11 It is rough.

12 MR. PAULIN: Yes, it is on occasion.

13 THE COMMISSIONER: I don't know how  
14 you can ever make it much smoother.

15 MR. PAULIN: I don't know how one  
16 could make it perfect.

17 THE COMMISSIONER: You see, they do  
18 have these labour courts. I admit the character of the  
19 dispute is such as to call for the highest understanding  
20 of social reconciliation. These labour courts are  
21 spread all over Australia. We have not experienced them  
22 in this country. Assuming now ---- and this is all  
23 speculative ---- that you have a first-class tribunal,  
24 the best you can obtain in this country in the way of  
25 men being fully informed of the whole field of labour  
26 relations as a social area, difficulty, assuming that  
27 they are in effect well trained as lawyers and you have  
28 them experienced in these matters to a degree that the  
29 ordinary courts cannot become experienced, would you  
30 still feel that it would be bad policy to give such a







1 tribunal the jurisdiction to deal with orders that are  
2 needed immediately?

3 MR. PAULIN: Well, in the experience I  
4 have had with administrative tribunals and appearing  
5 before them as a lawyer I would far prefer appearing  
6 before a court. I find there tends to be a great deal  
7 more objectivity in a court than there is before an  
8 administrative tribunal.

9 THE COMMISSIONER: That is true, but  
10 then you have to consider the authority and general  
11 character of the administrative tribunals with which  
12 you are familiar. I am dealing with one with which  
13 you are not familiar, but of which you have to imagine  
14 what the possibilities might be.

15 MR. PAULIN: If I might interject, sir,  
16 there was in the early days of labour relations in this  
17 province a labour court as such. My partner Mr.  
18 Ferguson may be able to tell you more about the  
19 experience in the labour court because I had no  
20 experience before it whatever. I don't know whether he  
21 did, but if I may say this, one thing that I would not  
22 like to see in the type of tribunal that you mention  
23 is a tribunal which would tend to become too concerned  
24 with conciliating or mediating a dispute that was  
25 before it because by the time an employer takes what is  
26 really the extreme step of proceedings as a result of  
27 a strike or picketing, then he is driven to do this  
28 by the fact that he is suffering most substantial  
29 damages.

30 THE COMMISSIONER: I know, but your





1 apprehension of such a court as that is somewhat similar  
2 to the labour apprehension of the ordinary court. You  
3 are familiar with the latter and not with the former  
4 and vice-versa in their case.

5 MR. PAULIN: Well, from a practical  
6 point of view on a day-to-day basis when I go into  
7 court applying for an injunction in a picketing case I  
8 find that counsel acting for the defendants is usually  
9 extremely well known to me because he is with the firm  
10 who acts for the trade union concerned and this is  
11 quite a highly specialized practice, there are few  
12 firms in it. But by the time this material has been  
13 served, then this man will telephone me before we go in  
14 or I will see him up there and we will discuss the  
15 matter and prior to, I suppose, this year a great  
16 number of these orders went on consent. Now they do  
17 not.

18 THE COMMISSIONER: I can see the  
19 handicap you are under in serving your writ. Do you  
20 suggest or do you favour the requirement of a registry  
21 office?

22 MR. PAULIN: Well, that is contained  
23 in the next brief which will come before you this  
24 morning, sir. I am familiar with that brief and I  
25 must say that I support that type of system.

26 THE COMMISSIONER: And I suppose it  
27 could be provided, means which are necessary so that  
28 you could serve notice then by telephone.

29 MR. PAULIN: Oh, yes. Ex parte is not  
30 satisfactory.







1 MR. POLLOCK: Mr. Paulin, dealing with  
2 the particular facts in this dispute, I think you  
3 suggested that or at least Mr. Ferguson suggested, that  
4 it was unlawful picketing in the sense that it was  
5 recognition picketing. My understanding of recognition  
6 picketing is that it is unlawful because it attempts to  
7 short-circuit the legislation: there is a general  
8 certification procedure set up and you either follow  
9 that procedure or not. In these particular circumstances  
10 I understand that the employees involved in this  
11 picketing ---

12 MR. PAULIN: They were not employees,  
13 Mr. Pollock.

14 MR. POLLOCK: Well, these individuals  
15 involved, had attempted to be certified.

16 MR. PAULIN: Yes.

17 MR. POLLOCK: And were found to be  
18 independent contractors and not certifiable.

19 MR. PAULIN: Yes.

20 MR. POLLOCK: Are you saying in those  
21 circumstances that this group of people ought not to  
22 organize and bargain collectively?

23 MR. PAULIN: Oh, no, that is not the  
24 point because about two weeks prior to the outbreak of  
25 this picketing, perhaps a week prior to the outbreak, I  
26 had gone down to London with representatives of the  
27 company and met representatives of this group of  
28 people and we had agreed --- they had some proposals  
29 for some form of collective bargaining perhaps in the  
30 sense of the employer dealing with representatives to





1 work out common problems of this group, and we had  
2 promised that we would consider the matter and come  
3 back in two weeks with a reply to it. It was about  
4 four or five days later that the picketing began.

5 MR. POLLOCK: Were you attempting to  
6 negotiate a type of collective agreement?

7 MR. PAULIN: No, no, we were attempting  
8 to negotiate to work out some form of negotiation by  
9 which we could meet with this group and iron out the  
10 common problems which they had.

11 MR. POLLOCK: You would not be able to  
12 afford this luxury if they had in fact been certified  
13 and came to you with a little piece of paper with a red  
14 seal on it.

15 MR. PAULIN: Not at all. It was not  
16 really a luxury: I thought that it was something from  
17 this particular employer's view which was rather liberal  
18 in the sense that he did recognize that this group may  
19 have problems and was quite willing, rather than to  
20 shove them under the rug, to try to assist them in  
21 resolving them to the satisfaction of both sides.

22 MR. POLLOCK: There does exist in this  
23 twilight zone of non-certifiable employees, the  
24 "dependent contractor" some people have termed them,  
25 that can't be certified. There is no legislation that  
26 compels the employer to bargain with them and the only  
27 technique they have to compel the employer to bargain  
28 with them is the old technique of economic picketing,  
29 economic force. Isn't that correct?

30 MR. PAULIN: Yes, you are back perhaps







1 in the days of Lyons & Wilkins.

2 MR. POLLOCK: That is right, the  
3 present-day system does not cover that.

4 THE COMMISSIONER: Is there recognition  
5 of picketing in that sense before certification has been  
6 granted that it is illegal?

7 MR. PAULIN: Yes, there is, sir.

8 MR. POLLOCK: Even in cases where  
9 there is no possibility under the legislation to be  
10 certified where the Labour Relations Board has said  
11 to the employees applying, "You are not certifiable,  
12 you are not employees within the definition of our Act"?

13 MR. PAULIN: I can't refer you to a  
14 case that says that because at the moment I don't know  
15 of one.

16 MR. POLLOCK: Acton and Caruso, I  
17 think, is the case. On the basis of your affidavits ---  
18 the previous case they mentioned was Lyons and Wilkins.  
19 On the basis of information and belief and affidavits  
20 on personal knowledge you say that the former are rare.

21 MR. PAULIN: They are rare to me, sir.

22 MR. POLLOCK: According to the  
23 Carrothers study they are not rare at all in the sense  
24 that at page 71 of that study the number of cases where  
25 affidavits on information and belief only were submitted  
26 were 178 affidavits in the years under study compared to  
27 169 affidavits where there were affidavits on information  
28 and belief and personal knowledge. In your own  
29 experience I would take it that is not the case.  
30





1 MR. PAULIN: Certainly not, sir.

2 I think that is a deplorable practice with respect to  
3 those people in my profession who might follow it, and  
4 I don't think it is necessary.

5 MR. POLLOCK: But it is certainly a  
6 practice.

7 MR. PAULIN: Well, obviously on the  
8 basis of these figures.

9 THE COMMISSIONER: That would give  
10 rise to the criticism --- I must say the criticism seems  
11 to be nullified by the fact that none of these have been  
12 successfully challenged.

13 MR. PAULIN: Or not even cross-examined  
14 on in many cases.

15 MR. POLLOCK: Let me get to that in a  
16 minute, but the other question I have is with relation  
17 to the ratio of ex parte injunctions on page 2 of that  
18 report. The ratio appears to be over 200 applications  
19 ex parte granted and less than 100 applications made on  
20 notice. So it is a two-to-one ratio of ex parte to  
21 notice, so I would say that your experience then is a  
22 peculiar experience in that you say that ex parte  
23 injunctions are only rare.

24 MR. PAULIN: Well, they have become  
25 rare, I say, but within the last year or so they have  
26 become increasingly difficult and sometimes virtually  
27 impossible to obtain. I don't know whether the policy  
28 of the law has changed or the policy of the courts has  
29 changed or not, but this is what we find. They are still  
30 granted in some cases, but I must say that the technique







1 today that is used by the judges seems to be to give one  
2 leave in a proper case to serve short notice of motion.

3 MR. POLLOCK: On the question of  
4 cross-examination on the affidavits, first of all  
5 dealing with the case where an ex parte injunction has  
6 been obtained and it is applied and in operation  
7 affidavits are then served on the individuals and, I  
8 assume, get to the solicitors of the union or the  
9 individuals involved. The return date on the notice of  
10 motion for continuation must be, of course, within four  
11 days, I assume.

12 MR. PAULIN: Yes.

13 MR. POLLOCK: Now, when he receives  
14 these affidavits what mechanics does he have to follow  
15 to obtain cross-examination on these affidavits?

16 MR. PAULIN: When the litigant is  
17 served with this material?

18 MR. POLLOCK: Well, where do you  
19 serve most of your material ---- on the persons named?

20 MR. PAULIN: Whenever we can find them,  
21 Mr. Pollock. Sometimes they are very difficult to find.

22 MR. POLLOCK: Assuming you can find  
23 the individual at the time you get the ex parte notice.

24 MR. PAULIN: You can serve them on the  
25 picket line.

26 MR. POLLOCK: Would you serve them with  
27 a notice to continue?

28 MR. PAULIN: Yes, where it was possible  
29 to do it in the circumstances.

30 MR. POLLOCK: In this particular





1 example you would have served them on Saturday.

2 MR. PAULIN: Yes, we had the notice of  
3 motion on the Saturday as well.

4 MR. POLLOCK: When was the notice for  
5 continuation returnable?

6 MR. PAULIN: I don't recall, sir.  
7 I believe it was on Tuesday, because it is my recollec-  
8 tion that weekly court sits on Tuesdays and Thursdays.

9 MR. POLLOCK: Now, in that interim  
10 of Sunday and Monday what was he supposed to do to get  
11 cross-examination on these affidavits?

RJY/SS 12 MR. PAULIN: What he would do, of  
13 course, is that he would consult his lawyer at the  
14 first opportunity and if his lawyer felt he did not  
15 have sufficient time in which to cross-examine on these  
16 affidavits, then he would undoubtedly contact me and  
17 request an adjournment to which I would not agree unless  
18 the injunction continued or unless there was some  
19 device by which the picketing might be removed. Then  
20 it would be up to the court as to whether or not an  
21 adjournment of the motion would be given in order to  
22 allow cross-examination, but I must emphasize that in  
23 this case there was no such request made.

24 MR. POLLOCK: Well, no, but I was just  
25 using the date and time to relate to something we could  
26 anchor ourselves on. You say he would consider whether  
27 he had time to cross-examine. I want to know from you,  
28 as an experienced lawyer in this area, whether a lawyer  
29 could cross-examine and have the transcript of the  
30 cross-examination ready in one day.







1 MR. PAULIN: No, there is no question  
2 of that; it is impossible.

3 MR. POLLOCK: So automatically as soon  
4 as you are served with this material you have to seek  
5 an adjournment.

6 MR. PAULIN: If there was something in  
7 the material which was improper.

8 MR. POLLOCK: Assuming he wanted to  
9 cross-examine on it.

10 MR. PAULIN: Well, cross-examining for  
11 what purpose? For the purpose of delaying?

12 MR. POLLOCK: No, because he is  
13 challenging this affidavit.

14 MR. PAULIN: Then, I think, if this is  
15 so, if there is an improper statement of fact in an  
16 affidavit and counsel for the defendants wishes to cross-  
17 examine upon it, then he is perfectly entitled to do it.

18 MR. POLLOCK: He has a right to do it.

19 MR. PAULIN: Yes. Of course, the  
20 plaintiff always must file an undertaking in obtaining  
21 an injunction that he will pay the damages of the  
22 defendants if it later appears that the defendants have  
23 sustained any damages by reason of the making of the  
24 order which the plaintiff ought to pay. I have  
25 referred the Commissioner to only one reported case which  
26 I know of where this was done --- this was in 1952.

27 MR. POLLOCK: That is another problem,  
28 as to whether or not you can assess the damages and  
29 whether the case goes to trial. But in these circum-  
30 stances, somebody faced with these affidavits who wants





1 to challenge them, it may not be improper and he may  
2 just disagree with the interpretation or the facts as  
3 they are set out in the affidavits and wants to  
4 question them. In effect, he receives the material on  
5 Saturday and he goes to his lawyer's house Saturday  
6 night, assuming he can reach his lawyer, they discuss  
7 the matter on Sunday, and I assume that on Monday he  
8 has to arrange for a shorthand reporter or a special  
9 examiner.

10 MR. PAULIN: If he can get an  
11 appointment.

12 MR. POLLOCK: Assuming that he can,  
13 and they give him service, and there is a summons on the  
14 person making the affidavit on the Monday morning early  
15 and he can get him down there in the morning of the  
16 Monday and get him cross-examined during that day, have  
17 the shorthand reporters work all night and type the  
18 transcript and then file it the following morning,  
19 that is fairyland --- I don't think that can be done.

20 MR. PAULIN: No, I would disagree.  
21 I would say it is physically possible to do it. I think  
22 I remember one case where something did happen that  
23 speedily, but it certainly is not the rule. It is the  
24 rare exception to the rule when that is done.

25 MR. POLLOCK: It is the exception  
26 because it is a practical impossibility to get that  
27 injunction over with, to get the affidavit cross-  
28 examined on without getting the injunction extended to  
29 carry on for a period of time. If the order is a blanket  
30 order prohibiting all picketing, then it is much better







1 to have half a loaf --- I guess that is appropriate in  
2 this submission --- it is better to have half a loaf,  
3 that is limited picketing, than to have no picketing  
4 for a week or ten days until all of the material comes  
5 before the court.

6 MR. PAULIN: That is quite true, but  
7 going back to this particular situation we have been  
8 talking about at this plant in London, if the defendants  
9 had thought that the motion ought to be opposed, that  
10 the affidavit material was incorrect, or that they  
11 had omitted statements of fact which were most relevant,  
12 and he wanted cross-examination, if you went to court  
13 and the judge said, "We will allow them four pickets  
14 at each entrance to this plant", this would have been  
15 most effective in keeping that particular plant closed  
16 until the cross-examination had been completed and the  
17 transcripts typed and so on. The result would have been  
18 the aggravation, in that particular case, of the  
19 plaintiff's damages to a very considerable degree.  
20 Then one is faced with, first of all, the policy  
21 question for an employer as to whether or not one will  
22 proceed to trial for damages, whether the deterioration  
23 in one's labour relations which this would cause is  
24 worth it. Secondly, you must also decided if you do go  
25 to trial for these extremely substantial damages and  
26 you get a judgment, how are you ever going to collect  
27 it? The damages in this particular case, had the  
28 picketing continued into the following week, would have  
29 run in my recollection literally into the hundreds of  
30 thousands of dollars.





1 MR. POLLOCK: You think on the facts of  
2 your case where the employees are not certifiable, the  
3 picketing was peaceful ---

4 MR. PAULIN: No, it was not peaceful.

5 MR. FERGUSON: It was originally.

6 MR. PAULIN: Yes, it was originally.

7 MR. POLLOCK: Assuming it had remained  
8 peaceful.

9 MR. PAULIN: It is quite sufficient to  
10 shut the plant down tightly.

11 MR. POLLOCK: Assuming it had done in  
12 this case and the employees are not certifiable and  
13 they want to bargain collectively, they want to  
14 negotiate together with the employer, they can't to the  
15 Labour Relations Board and become certified, and they  
16 put up a picket line, two or three men --- this is an  
17 assumption --- where it is peaceful picketing and the  
18 facts and the banners are true, and there is no problem  
19 as far as blocking the entrances or doing any of these  
20 things are concerned: Do you think you could ever  
21 succeed in a claim of damages against that union in  
22 those circumstances?

23 MR. PAULIN: Yes, I do because, in the  
24 first place, if we can get back into these people,  
25 dealing with them as individuals, they are independent  
26 contractors and they are not sort of indentured to this  
27 company under their contracts. Many of them themselves  
28 are employers: They have large, and some of them fairly  
29 successful operations. They employ people to work for  
30 them, and these are the people with whom one is concerned







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1 in this particular case. What you are doing is that  
2 you are saying to me in effect that if these men want  
3 the best of both of these situations, ought they be  
4 able to have it and obtain it in their own way?

5 MR. POLLOCK: The best of which  
6 situations?

7 MR. PAULIN: Both situations. They  
8 have voluntarily signed these agreements with the  
9 company under which they become independent contractors.  
10 Some of them are employers of labour themselves.  
11 Some of them want that, and they also want a sort of  
12 collective bargaining right at the same time. Now, I  
13 say that that is the best of both situations that they  
14 are after. In obtaining this process even by peaceful  
15 means, I don't know if I understood you to say that they  
16 ought to be allowed peacefully to picket these premises  
17 and to inflict many hundreds of thousands of dollars  
18 of damages on the employer in the process, and then be  
19 immune from any responsibility for the actions which  
20 they have taken. We have mentioned Lyons and Wilkins  
21 which went to the Court of Appeal twice around 1899 or  
22 1900, and I think the law governing this ---

23 MR. POLLOCK: That was a criminal  
24 type of case?

25 MR. PAULIN: No.

26 MR. POLLOCK: Wardlock and Lyons and  
27 Wilkins are those cases, aren't they?

28 MR. PAULIN: Yes, but I don't think  
29 the Wardlock case is parallel. When you say criminal,  
30 this was legislation in the United Kingdom -- I think it





1 was the Conspiracy and Property Protection Act, and  
2 this was an action for damages and for injunction,  
3 Lyons and Wilkins, and that section of the statute was  
4 being considered by the Court of Appeal, which I think  
5 is now Section 366 of the Criminal Code.

6 MR. POLLOCK: Yes, but subsequent to  
7 that --- well, the most prominent case now, 1942, was  
8 the Crofter case; without getting into a large  
9 extension of the law there were no certification cases.

10 MR. PAULIN: This was a conspiracy  
11 case. I am talking about an action for damages against  
12 individuals without any allegation of conspiracy,  
13 because I do not pretend to understand the Crofter  
14 case at all. I recall a decision, I believe, in the  
15 Alberta Court of Appeal, perhaps around 1924, which I  
16 think went to the Supreme Court of Canada about that  
17 time.

18 MR. POLLOCK: Renners?

19 MR. PAULIN: Yes, the Renners case  
20 which I think may cover the situation that you have  
21 been describing to me.

22 MR. POLLOCK: Well, there was a pretty  
23 violent situation in that case.

24 MR. PAULIN: Well, I am on the principle  
25 --- I am not talking about the facts.

26 THE COMMISSIONER: This demand was  
27 for recognition of what? Of the people who were  
28 picketing, themselves?

29 MR. PAULIN: Yes, these independent  
30 contractors picketed this plant.





1 THE COMMISSIONER: Would you say as a  
2 matter of law in this province that an uncertifiable  
3 body is acting within its privileges in attempting to  
4 coerce a recognition by the employer?

5 MR. PAULIN: If damage to the employer  
6 results, yes.

7 THE COMMISSIONER: Oh, no, I am just  
8 wondering whether that is not in contradiction to the  
9 whole purpose of the Labour Act.

10 MR. PAULIN: Oh, it is indeed, sir.  
11 Unfortunately, this group was not under that.

12 THE COMMISSIONER: Therefore, they  
13 are entirely outside any relation of labour.

14 MR. PAULIN: Yes.

15 THE COMMISSIONER: Just as much as if  
16 I had organized a group to compel you to do something  
17 else.

18 MR. PAULIN: Yes.

19 THE COMMISSIONER: So you say they are  
20 not in a position to claim the labour interest which  
21 they assert as the justification for advertising.

22 MR. PAULIN: That is true. That is  
23 my position.

24 MR. FERGUSON: It was used as an  
25 example to show the results of any type of picketing.

26 THE COMMISSIONER: I appreciate that.

27 MR. FERGUSON: From your questioning,  
28 sir, and from Mr. Paulin's answers it seems we as  
29 employers are dealing with exceptions to the general  
30 practice of obtaining an injunction. We have no doubt







1 there may be particular cases where an injunction may  
2 have been granted on the type of material which we would  
3 not consider of the highest order. These are exceptions,  
4 in our view. The trade union movement itself repeatedly  
5 claims this question of "lack of familiarity with the  
6 courts". They, in fact, want to wipe out all  
7 injunctions.

8 THE COMMISSIONER: Well, some of  
9 them. I notice in the Algoma case they are complaining  
10 the injunction was not resorted to.

11 MR. FERGUSON: Statements are being  
12 made about the indiscriminate use of injunctions and  
13 that they are issued on the flimsiest of evidence and  
14 the police can and in fact should be able to handle  
15 any breach of the peace on any picket line. With all  
16 due respect, those are not accurate statements, in our  
17 practice. We do not have any trouble with union counsel,  
18 to obtain their consent on many, many cases, on the  
19 reduction or elimination of picketing. It is a rare  
20 case where we do not get some consent. And we don't  
/FN/SS 21 believe they have any trouble with us when there is a  
22 high standard of material used.

23 It may be that it would assist the  
24 parties when you refer to the court that there could  
25 be certain members of the court who would have, through  
26 the administrative process of the court, authority to  
27 deal with labour matters and labour injunctions, who  
28 would become more familiar with them, who might become  
29 more familiar with the desire to have a standard type of  
30 material. This might improve the situation today.





1 We must admit that when attempting to obtain an  
2 injunction from the court it may be that certain judges  
3 are more reluctant to deal with it than others. They  
4 may not be as familiar with labour matters as some of  
5 the other judges, and this means they need a practical  
6 solution. We have been generally concerned about the  
7 growth of administrative tribunals. This organization  
8 is reluctant to suggest that the powers of the Labour  
9 Relations Board be extended. The Board has been subject  
10 to criticism for delays, for not being as objective  
11 as one would want it to be.

12 THE COMMISSIONER: I think it has a  
13 well laid out plan of jurisdiction and I have no  
14 suggestion of changing that.

15 MR. FERGUSON: We are concerned about  
16 the growth of a new body with all of these  
17 administrative tentacles.

18 THE COMMISSIONER: Maybe you are  
19 assuming too much. They might not have the considerable  
20 tentacles.

21 MR. FERGUSON: We are fearful of that,  
22 though, whereas we might be more satisfied that  
23 the matter might be dealt with by certain members of  
24 the courts who are more familiar with labour matters.

25 THE COMMISSIONER: Your situation  
26 is rather peculiar, that is to say, you are in the  
27 position where interruption almost of 24 hours would  
28 be very serious.

29 MR. FERGUSON: That is correct.

30 THE COMMISSIONER: I was wondering







1 whether there are groups like that which would justify  
2 sort of a classification of businesses so that you  
3 could have special consideration given to special,  
4 unique forms of business organizations.

5 MR. FERGUSON: Well, we could deal  
6 with the question of classifications. We have no  
7 doubt in our minds that in certain essential industries  
8 the normal procedure of collective bargaining must be  
9 carefully analyzed.

10 THE COMMISSIONER: For instance, it  
11 has already been recognized that construction work  
12 justifies a separate code almost. It has been dealt  
13 with separately because of the peculiar makeup of its  
14 structure. You have a dozen unions all concerned with  
15 portions of very large work and you see from what has  
16 happened in Sault Ste. Marie that a dispute with 100  
17 men can lay off 7,000 or 8,000 belonging to a different  
18 union. In that case I am not sure whether they were  
19 different unions or not but they certainly had  
20 conflicting interests.

21 MR. FERGUSON: We find in our  
22 industry that we have unions, even two unions which  
23 are both affiliated with the Canadian Labour Congress  
24 and there certainly is conflicting interest between  
25 those two unions. We find we have locals of the  
26 Teamsters organization very much in conflict.

27 THE COMMISSIONER: I was wondering  
28 whether you and your clients had ever considered  
29 the situation from the point of view of a federation of  
30 some sort.





1 MR. FERGUSON: We dealt with that in  
2 our brief.

3 THE COMMISSIONER: You touched upon  
4 it, yes.

5 MR. FERGUSON: It may be at some time  
6 that there will be some form of industry collective  
7 bargaining in the baking industry, I don't know. The  
8 reason that it has not come about or one of the  
9 main reasons is that the employers have felt that if  
10 there was industry-wide collective bargaining the  
11 collective agreement itself would cover a much greater  
12 area and the employers have not been successful in  
13 convincing the unions that in industry-wide agreements  
14 there should be appropriate and equitable differences  
15 in wage rates for the different areas of the province.

16 In addition to that the employers,  
17 if they were acting as a group, still cannot avoid the  
18 complexity and the conflicts of the different unions with  
19 which they would deal. There is no uniformity within  
20 the unions themselves and you could tell, there are  
21 certain unions, many of them not being affiliated with  
22 the Canadian Labour Congress at all and here the  
23 employer group, as any employer association in  
24 collective bargaining, finds it very difficult. It is  
25 not a question of dealing even with an association of  
26 trade unions which are affiliated. Personally, I always  
27 think that so many of the problems facing us today,  
28 when they are being analyzed, don't recognize the  
29 structure of the trade union movement itself. It is  
30





1 fine for one person to say, "Why don't we adopt some-  
2 thing that has been successful in Sweden or Australia  
3 or other jurisdictions". The trade union movement is  
4 completely different in many sections.

5 Look at this new C.N.T.U., the  
6 Confederation of National Trade Unions as a very recent  
7 development in the Province of Ontario. Whether or not  
8 it will affect these employers we don't know. This  
9 again is throwing a great deal of confusion and bitter-  
10 ness into the whole organization of trade unionism.

11 THE COMMISSIONER: What would you  
12 point out as the features of the essential difference  
13 between the labour movement here and, say, in the  
14 United States?

15 MR. FERGUSON: I believe the United  
16 States as such is not the best comparison because I  
17 know there are differences within the trade unions in  
18 the United States. They may have a more stabilized  
19 type of affiliation in the United States than they have  
20 in the Dominion of Canada, but in the Dominion of  
21 Canada they appear themselves to be at war all the  
22 time and I don't know how to solve that, sir.

23 THE COMMISSIONER: Perhaps you have  
24 thought something about it, I am quite sure. What  
25 instigates this competition?

26 MR. FERGUSON: One of the basic  
27 competitive factors is that the original concept of  
28 trade unionism between the industrial unions and the  
29 craft unions. That is obviously one of them. The  
30 second one is the affiliation of trade unions with







1 political parties.

2 THE COMMISSIONER: That can't be said  
3 to have taken place before the formation of the New  
4 Democratic Party, can it?

5 MR. FERGUSON: No, I think it is one  
6 of the factors that exist, though, that there are  
7 certain trade unionists. ---

8 THE COMMISSIONER: You think it has  
9 come into existence in the last three or four years?

10 MR. FERGUSON: I think it has. Very  
11 definitely in the last five years. There are responsible  
12 trade unionists who do not believe there should be  
13 political affiliation in the trade union movement.  
14 This has caused a rift.

15 THE COMMISSIONER: Assuming that is  
16 the case, when in actual prosecution of the trade union  
17 interests do these considerations become operative?

18 MR. FERGUSON: Well, I think with  
19 respect --- and I am expressing my personal views ---  
20 I think they have forgotten the aims and ideals of the  
21 trade union movement and have, some of them, become  
22 political hacks, if I could use that expression.

23 THE COMMISSIONER: You think the  
24 political flavour there in itself has affected them?

25 MR. FERGUSON: It has affected their  
26 whole thinking of their original view of looking after  
27 the rights, privileges and responsibilities of the  
28 working man, I think, not as a political party. And I  
29 think that so many of the attitudes express political  
30





1 flavour.

2 THE COMMISSIONER: Would you make the  
3 same criticism of the labour movement in England?

4 MR. FERGUSON: Well, I don't profess,  
5 sir, to be an expert in the trade union movement. I  
6 think it has been tempered with some more moderate cool  
7 thinking.

8 THE COMMISSIONER: That is in the course  
9 of maturity.

10 MR. FERGUSON: In the course of  
11 maturity. I believe there has been the emergence of  
12 some more moderate, cool thinking. But here,  
13 unfortunately, that has not been possible because there  
14 is a tremendous antagonism between the groups. I can  
15 recall in the construction industry years ago when the  
16 Province of Ontario asked the construction industry to  
17 sit down with all of the trade groups to discuss  
18 matters of mutual interest, the trade union movement took  
19 two days at the meeting and they couldn't agree on who  
20 would be the spokesman and the whole thing, of course,  
21 collapsed.

22 THE COMMISSIONER: Has personal  
23 ambition anything to do with it?

24 MR. FERGUSON: I think personal  
25 political ambition has a great deal to do with it.

26 THE COMMISSIONER: Rather than union  
27 ambition.

28 MR. FERGUSON: I think that is a factor,  
29 sir, yes.

30 MR. POLLOCK: You say they ought not to







1 resort to economic weapons to change the legislative  
2 policy. If they are not covered by the legislation  
3 people ought not to be organized --- I am putting Mr.  
4 Paulin's words in your mouth.

5 MR. PAULIN: Not organized, certain of  
6 them.

7 MR. POLLOCK: You think they ought not  
8 to be organized to face the legislation. If they are  
9 faced with a group of laws with which they disagree what  
10 other alternative is open to them?

11 MR. FERGUSON: I believe anyone  
12 should in his own mind create constructive alternatives,  
13 constructive procedures, not merely to obliterate  
14 everything which we have built up over the years.

15 MR. POLLOCK: I am sure all of us  
16 are faced with a group of laws at one time or another  
17 with which we disagree. I am.

18 THE COMMISSIONER: There was one  
19 instance that was demonstrated in England. You remember  
20 in 1956 or 1957 they passed an Act as a result of the  
21 general strike and I remember reading that Ernest  
22 Bevin made a solemn resolve that if it were ever within  
23 the power of the Labour Party to repeal that Act it  
24 would be repealed, and, as a matter of fact, the  
25 government of which he was a member did present the  
26 repeal and it was passed. There is one case where there  
27 was something specific.

28 MR. PAULIN: You get into power so  
29 that then you have the power to change the law.

30 MR. POLLOCK: In the course of your





1 brief, Mr. Ferguson, the brief of the organization, you  
2 discuss the question of bargaining in good faith and I  
3 have been asking this question of everyone appearing:  
4 What does that mean? You place some responsibility on  
5 the conciliation officer and the conciliation board to  
6 take that into consideration and make some recommendation  
7 on the basis of that. Could you provide some kind of a  
8 guide to these individuals as to what "bargaining in  
9 good faith" is? We can easily clearly see what  
10 bargaining in good faith is, "I am not going to talk to  
11 you", as a bad example.

12 MR. FERGUSON: I think, Mr. Pollock,  
13 without a doubt the negative approach has been adopted.  
14 It is easier for one to adopt the negative approach of  
15 saying, "What does not constitute bargaining in good  
16 faith?". A great deal has been done in the United States  
17 in this respect, far more than in our jurisdiction.  
18 I think there have been many standards of measurement  
19 in the United States which could be used. Without any  
20 doubt there are specific examples. I think many of  
21 those could be used. I am sure that none of us would  
22 have much difficulty if an employer said to a union,  
23 "I won't sign anything no matter what you put in front  
24 of me", I don't think you would have too much ---

25 THE COMMISSIONER: That might be said  
26 in good faith.

27 MR. FERGUSON: I would doubt it.

28 MR. POLLOCK: He might say, "I can't  
29 do it, my finances will not allow it".

30 MR. FERGUSON: This, sir, might not





1 constitute bad faith, but without some reasonable,  
2 logical position being taken it would be difficult to  
3 say it was not in good faith.

RY/SS 4 MR. POLLOCK: Let me ask you at the  
5 next stage, in the conciliation proceeding where you  
6 are before either a conciliation officer or a  
7 conciliation board and it is suggested he make  
8 recommendations on which of the settlements or positions  
9 he favours. What criteria does he use himself to  
10 determine what ought to be the just settlement of this  
11 dispute, and is he bound between the employee request  
12 and the company offer or can he go outside those two  
13 areas?

14 MR. FERGUSON: I think he originally  
15 enters the jurisdiction when certain matters are in  
16 dispute. He must deal with the matters which are  
17 referred to only. There is the obligation on the part  
18 of the parties to know whether the terms of reference are  
19 to either the officer or the board. The obligations  
20 must be on the parties to make full representations to  
21 that officer or to that board, not merely take the  
22 attitude of saying, "This is a waste of time. Let us  
23 get it over with" or "We are not going to appear. What  
24 is the sense of appearing here?", and walk out, or for  
25 the employer to say that it is a waste of time and  
26 he is not going to discuss the matter or to say, "I  
27 have not got any money and I am not going to give any  
28 increases and I am in destitute circumstances. This is  
29 a subterfuge"; if he wants to say that he has got to be  
30 able to back it up. Then that conciliation officer or







1 conciliation board should make specific recommendations  
2 based on the representations of the parties, the evidence  
3 before him, and his own knowledge of what should be a  
4 proper, equitable settlement. I see no mystery in it.  
5 Many chairmen have done it in conciliation boards.  
6 Many conciliation officers have made such recommendations  
7 to the parties when they appeared before them. There is  
8 no mystery.

9 THE COMMISSIONER: Do you think the  
10 criticism of the board is due to the fact they have  
11 omitted to set forth the basis of their reasoning or  
12 the basis of their finding and abstained from making  
13 a finding?

14 MR. FERGUSON: I think years ago, sir,  
15 there was a consistent practice of conciliation boards,  
16 wherever constituted, making recommendations to the  
17 parties. This was the early phase, and then over the  
18 years it became the fashion of certain chairmen to  
19 throw their hands up, perhaps not having discharged  
20 all their responsibilities either and say, "Oh, we will  
21 merely make no report, or a wash-out report and send  
22 the parties back to bargaining".

23 THE COMMISSIONER: What do you mean  
24 by "wash-out report"?

25 MR. FERGUSON: Make no recommendations  
26 of any kind and merely say, "There have been numerous  
27 reports of this nature. The parties met on such and  
28 such a date" ---- there may have been three or four  
29 hearings --- "and the board attempted to bring about a  
30 settlement and the board unfortunately reports that it





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1 was not successful and recommends that the parties sit  
2 down and try to work out a settlement". No recommenda-  
3 tions of any kind on one single issue in dispute.

4 THE COMMISSIONER: That is their  
5 function, isn't it, on a reference to an arbitration  
6 board?

7 MR. FERGUSON: This has been accepted  
8 in conciliation as constituting the report of the  
9 conciliation board. This, in my respectful view, does  
10 nothing. We think that a board has the authority  
11 to not only deal with the matters in dispute, to try  
12 and effect a settlement between the parties, but if not  
13 successful make a complete recommendation to the  
14 parties, to the public, to the Minister, to the  
15 Department of Labour.

16 THE COMMISSIONER: At times they do  
17 that.

18 MR. FERGUSON: Yes, but it is becoming  
19 less frequent, and of course the boards themselves are  
20 becoming fewer in number. We say whenever there is a  
21 board, and in many cases there is a requirement of the  
22 board, both parties if they have bargained in good  
23 faith, if they are unable honestly to reach a settlement,  
24 in order to avoid a work stoppage, obviously in many  
25 cases there is a necessity for a board, and that board  
26 should make specific recommendations. It only then can  
27 assist the parties.

28 MR. POLLOCK: One of the difficulties  
29 it seems to me in this bargaining in good faith and  
30 making recommendations, is that if the conciliation







1 board is limited in its jurisdiction to that space  
2 between the union's request, which I assume is up here,  
3 and the employer's offer, and they can make recommenda-  
4 tions in this area, what are the types of information  
5 that the conciliation officer is entitled to look at?  
6 Does he look at the economic situation? Does he look  
7 at the comparative working wages in the industry of  
8 comparable workers, and all these different things, and  
9 in that area is he confined to this physical difference  
10 between the two parties?

11 MR. FERGUSON: I think with all due  
12 respect he should be capable and he should be prepared  
13 to look at anything, so long as he is dealing with the  
14 matters in dispute and coming up with a compromise on  
15 those matters.

16 MR. POLLOCK: A compromise between the  
17 two positions?

18 MR. FERGUSON: Collective bargaining  
19 results in compromise; there is no doubt of that.

20 MR. POLLOCK: I ask you, then, this:  
21 In contemplation of conciliation and going to the  
22 conciliation board there must be some interest in the  
23 parties on one side to keep their offer as low as  
24 possible and on the other side to keep their request  
25 as high as possible so that they have got lots of scope  
26 for the conciliation officer, and the conciliation  
27 board, to make a decision perhaps in their favour.

28 MR. FERGUSON: They want to retain  
29 certain flexibility, of course, and a certain scope,  
30 but these are flexibilities you are referring to.





1 These are not inflexible attitudes. That is when you get  
2 failure to bargain in good faith. Flexibilities within  
3 the scope, yes, then it leads to compromise. It has  
4 been described by others, I am sure, that collective  
5 bargaining constitutes a large game of chess or checkers.

6 MR. POLLOCK: Or poker.

7 MR. FERGUSON: Or, poker. That is  
8 sometimes not a bad description but it must be done in  
9 good faith.

10 THE COMMISSIONER: It seems to me the  
11 only thing you can say about good faith is that there  
12 is no positive misrepresentation. There is honesty at  
13 least in the external representation, and the moment you  
14 get that you get about the limit, because you have a  
15 reconciliation of conflicting interests, and nothing  
16 has been suggested certainly to this Commission as to  
17 any criteria by which you define the limits of those  
18 interests.

19 MR. FERGUSON: I agree, it is a very  
20 difficult matter to define. I think one has to take  
21 the negative approach and say that certain things do  
22 not constitute bargaining in good faith, and in due  
23 process of time one eliminates certain descriptions  
24 and comes up with an appropriate concept of it. We  
25 have found in our industry that this has been one of the  
26 basic problems, an employer being told by a union,  
27 "Put it on the table and keep putting it on the table  
28 and we will let you know when we have got enough", or,  
29 "We will not change our demands".

30 THE COMMISSIONER: Yes, I think it is





1 more or less to say

2 MR. FERGUSON: This is very difficult  
3 for the employer who knows that in twelve hours or 24  
4 hours his bakery will be shut down. He will face, of  
5 course, not only a tremendous loss on the market, because  
6 we acknowledge the fact that there is less and less  
7 product royalty; he faces tremendous wastage. The  
8 bacterial problems he faces in this industry are  
9 fantastic. He can face a real problem on bacteria  
10 alone within his own plant if faced with a shutdown.

11 MR. POLLOCK: Germ warfare.

12 MR. FERGUSON: Germ warfare in the  
13 face of economic warfare.

14 THE COMMISSIONER: Your reason,  
15 which is an excellent one, indicates, though, that  
16 there has gradually been brought about a unification  
17 or the creation of larger unions: Does that mean  
18 ultimately the corner store is, in a sense, going out  
19 of existence?

20 MR. FERGUSON: I would like Mr.  
21 Filion to deal with that because he has had a very  
22 extensive experience.

23 MR. FILION: I don't think the  
24 corner store is going out of existence, sir.. I think  
25 it is just changing its character. Certainly a greater  
26 proportion of the food purchased by the housewife is  
27 purchased in supermarkets, and this seems to be an  
28 increasing trend, but the smaller stores can band  
29 together as a voluntary chain, and a good many of these  
30 have done so. Then there are others which become a







1 chain of small general stores, some of them under some  
2 national organization. Then there are individual  
3 variety stores and confectionery stores which sell a  
4 considerable number of things. In effect, there is  
5 still quite a free market for the store.

6 THE COMMISSIONER: I suppose in the  
7 case of certain goods the small individual producer  
8 can by reason of unique quality or unique characteristic  
9 maintain his position in the market regardless of what  
10 is working against him. Is that so? I know I have a  
11 preference for a certain kind of bread and it is  
12 produced by an individual. Now, that individual seems  
13 to be able to persist.

14 MR. FILION: Indeed he does continue,  
15 sir. In Ontario now according to the last D.B.S.  
16 figures there are 794 bakery establishments.

17 THE COMMISSIONER: And there may be,  
18 I suppose, family establishments?

19 MR. FILION: A large number of them,  
20 probably 90% or 95% of these establishments, are family  
21 organizations or individual bakery craftsmen.

22 THE COMMISSIONER: Is the machinery,  
23 you might call it, or apparatus which is necessary to  
24 put out, say, sufficient product to maintain himself  
25 and family, within the range of his maintaining with  
26 his financial means?

27 MR. FILION: I think he can make a  
28 fair living out of his own bakery.

29 THE COMMISSIONER: It would depend  
30 primarily upon the quality, wouldn't it?





1 MR. FILION: Yes, and he would put in  
2 more hours than a unionized bakery.

3 THE COMMISSIONER: Oh, quite, but it  
4 becomes with him more or less a way of life. It demands  
5 something unique, though? Without disrespect you might  
6 call it the run-of-mind bread, and on the smaller scale  
7 you can get bread that has quality that appeals to  
8 certain classes of people. Am I right in that?

9 MR. FILION: Yes, sir, he has to  
10 produce the type of product that people in his immediate  
11 neighbourhood will come to him to purchase.

12 THE COMMISSIONER: I suppose that  
13 type is not very much concerned, where it is more or  
14 less in the family, he is not concerned with labour  
15 relations.

16 MR. FILION: Not normally, sir, although  
17 there are a few ethnic groups of bakeries that are  
18 unionized.

19 THE COMMISSIONER: What would you have  
20 to say, because of your experience, of the tendency of  
21 these large chain stores to go into these business  
22 productions themselves.

23 MR. FILION: This has developed, I  
24 think, partly because of the attitude of the unions  
25 with which we are dealing who say, "You sell your bread  
26 for the same price, therefore, you should pay the same  
27 wages". There have been cases where because of strikes  
28 some of the chains have been short of bakery products  
29 and they have decided they are going to protect  
30 themselves against the source of supply of products







1 being cut off in this manner by having their own  
2 bakeries. There are two types of bakeries: Some of  
3 them are in-store bakeries where they bake them on the  
4 premises and in other cases a central bakery which, in  
5 fact, becomes a wholesale bakery.

6 THE COMMISSIONER: I gather that you  
7 express the view that it would not take a very long  
8 strike, say, almost to destroy the smaller bakery.

9 MR. FILION: Bakeries are exceedingly  
10 vulnerable to the effect of strikes.

11 THE COMMISSIONER: You are familiar  
12 with the labour relations in the bakery business over  
13 the past few years?

14 MR. FILION: Yes, sir.

15 THE COMMISSIONER: Have there been  
16 many strikes, over the last few years? As far as the  
17 Bakery Council are concerned have there been many  
18 strikes?

19 MR. FILION: No, there have not been  
20 very many perhaps in relation to the number of  
21 collective agreements in effect.

22 THE COMMISSIONER: What would you say  
23 as to the length of those strikes and the consequences?

24 MR. FILION: Generally of quite short  
25 duration, anywhere from perhaps 24 hours to three weeks,  
26 although there have been other cases outside of this  
27 province where they have lasted longer than that.

28 THE COMMISSIONER: And with what  
29 result to the bakery?

30 MR. FILION: Perhaps loss of 25%, 30%





1 of the market at the time the products go back on the  
2 street.

3 THE COMMISSIONER: More or less  
4 permanent loss?

5 MR. FILION: In some cases it has  
6 been, sir.

7 MR. POLLOCK: That would be a result  
8 of permanent gain to someone else in the industry.

9 MR. FILION: Probably. Some of them  
10 would perhaps be in a better position if they had  
11 excess productive capacity in order to take on the  
12 extra market.

13 MR. POLLOCK: There is some agreement  
14 among the bakeries that when their plant is struck they  
15 fill the gap?

16 MR. FILION: Yes.

17 THE COMMISSIONER: It is very  
18 difficult to organize that type of industry against the  
19 field of unionism.

20 MR. ST. PIERRE: It enters the field  
21 of combines, sir.

22 MR. POLLOCK: Well, the newspapers some  
23 way managed to escape that large net.

24 MR. FERGUSON: This has been one of  
25 the problems, the type of collective agreement which  
26 has created the problem.

27 MR. POLLOCK: The industry-wide  
28 collective agreement would solve that problem.

29 MR. FERGUSON: It might solve it in  
30 one way, Mr. Pollock, but it could lead to other dangers.





1 MR. POLLOCK: It would reduce the  
2 absolute vulnerability of the individual to the strike  
3 if he knew that all of the production of bread was  
4 going to be cut off: "I am not going to lose my business  
5 without you losing your business." In that sense he  
6 would be enjoying his misery.

7 THE COMMISSIONER: What I gathered  
8 you said was that there is a differentiation in  
9 circumstances and conditions.

10 MR. FERGUSON: In rates and in the  
11 area. If there was responsible collective bargaining  
12 I would hope personally that it would come about.

13 MR. POLLOCK: Even in industry-wide  
14 negotiations in some areas the standard rate is not  
15 necessarily applicable in all areas.

16 MR. FERGUSON: We could not as an  
17 industry negotiate with the trade union movement. They  
18 would not sit down together in one room. We have got  
19 differences in different provinces between union  
20 people with whom we as an industry deal. They won't  
21 sit together at one table. They would like to destroy  
22 each other, even locals of the Teamsters.

23 MR. POLLOCK: Then neither of you are  
24 in a very good position as far as putting your own house  
25 in order is concerned.

26 MR. FERGUSON: But we as individual  
27 employers are in an adequate position to bargain in  
28 good faith. We ask them to do the same.

29 THE COMMISSIONER: Would you say that  
30 the employees really accept the assurances of the







1 narrowness of margins on which the companies are  
2 operating?

3 MR. FERGUSON: I think I would like to  
4 ask Mr. Flavelle to deal with that point.

5 THE COMMISSIONER: It is hard to  
6 believe that these unions are going to the point of  
7 destroying the present means at least of their own  
8 employment.

9 MR. FLAVELLE: Well, sir, I don't  
10 think it is appreciated, the close margins that are in  
11 operation in the bakeries generally. I think the  
12 employees themselves find it difficult to understand  
13 the small margins that are involved in their employment.

14 THE COMMISSIONER: I have no doubt  
15 that you try to state your case to them.

16 MR. FLAVELLE: Oh, indeed, yes.

17 MR. POLLOCK: Just as a matter of  
18 particularity you suggest on page 10 of your memorandum  
19 that you have in the past granted substantial wage  
20 increases. I would be obliged to know how much, first  
21 of all, the lowest-paid workers in the plant earn per  
22 year and what are the average production wages in the  
23 plants. Have you got those figures?

24 MR. FERGUSON: Mr. Filion, can you  
25 give us those?

26 MR. FILION: I don't think I could  
27 give you individual figures here for individual plants,  
28 but these figures for the baking industry in Ontario  
29 which were taken from the last available complete  
30 D.B.S. studies might be illuminating. The bakery sales





1 in Ontario are \$169,110,000. The payroll is \$50,883,000.  
2 and the industry employs 12,600 persons. Now, this  
3 gives us a payroll percent to sales of 30%, which is the  
4 highest of any food manufacturer and would put us in  
5 what we would regard as the labour intensive industry.

6 Applying these figures we would  
7 have average annual sales per employee on the payroll  
8 of \$13,400.00. Breaking that down further, the annual  
9 net profit after tax reported for all bakeries in Canada  
10 for that same year was 2.09%. So if we apply this to  
11 \$13,000.00 of sales per employee we get a net profit  
12 per employee on the payroll of \$268.00 a year or  
13 approximately \$5.00 per week per employee. This is the  
14 area in which we can move, since you asked, sir, about  
15 the margin we have to operate on in our industry. It  
16 is this \$5.00, assuming that the prices remain static,  
17 that would have to be applied to demands for wage  
18 increases on the part of the unions with whom we deal.

19 MR. FERGUSON: I think, Mr. Pollock,  
20 that rather than give you any figures which we have I  
21 want to state to you that as a result of the existence  
22 of the Labour Relations Committee and the making of this  
23 presentation we want to file with you a statistical  
24 survey or summary, a form which will show you the  
25 increases in wage rates over the years and the increase  
26 in cost of fringe benefits just in order to confirm the  
27 statement we have made in our brief. We would like to  
28 give you the figures on that and I undertake to file  
29 them and we have been preparing them.

30 MR. POLLOCK: I just wondered from a







1 general point of view, there are four bakeries  
2 represented here ---- just to get the feeling of this  
3 brief I wondered if you could indicate what the level  
4 in any particular industry was of annual salary in rough  
5 estimate of the lowest paid and the average.

6 MR. LARGE: I have here for June 30th,  
7 1966 the average hourly earnings of all manufacturers,  
8 \$2.23 an hour. For the food and beverage industry,  
9 \$1.92, and for the bakery products industry, \$1.88 an  
10 hour.

11 MR. POLLOCK: That is the average?

12 MR. LARGE: That is the average.

13 MR. POLLOCK: So there are some making  
14 substantially more than that and some making substantially  
15 less than that.

16 MR. LARGE: Yes. I don't have the  
17 range, that is just an estimate.

18 MR. POLLOCK: Are there any people  
19 employed in your plants who are earning less than \$1.25  
20 per hour?

21 MR. FERGUSON: I would like Mr. St.  
22 Pierre to deal with this. He can give you specific  
23 examples from his large employment number. He has 35  
24 collective agreements.

25 MR. ST. PIERRE: The lowest rate in  
26 Toronto, sir, is \$2.41 per hour with our company for a  
27 male employee. It is his minimum. So I will leave it  
28 to you to multiply by 40 times 52 plus the overtime  
29 involved and the penalties attached to it. I would say  
30 that in Toronto if you took a look at the average T-4





1 for the people employed with our company it would be  
2 well in excess of \$5,000.00 right on up and this also  
3 applies to sales and transport and all the other  
4 services provided with them.

5 MR. POLLOCK: So the bakery workers  
6 in Toronto are making between \$5,000.00 and \$6,000.00  
7 by rough calculation per year?

8 MR. ST. PIERRE: That is quite right,  
9 with our company, sir.

10 MR. FERGUSON: There are some  
11 variations, Mr. Pollock, but among the responsible  
12 companies appearing before you you will not find that  
13 much variation. You might in some classifications find  
14 variations of even 25 cents per hour in one particular  
15 classification, but generally speaking the statement  
16 of the bakery employees of these companies is  
17 approximately right.

18 THE COMMISSIONER: Thank you very much,  
19 Mr. Ferguson and gentlemen.

20 We will take an adjournment of  
21 fifteen minutes.

22  
23 ---Short recess.  
24  
25  
26  
27  
28  
29  
30





1 THE COMMISSIONER: Gentlemen, the  
2 next submission we are going to take into consideration  
3 is that of the Board of Directors of the Ontario Chamber  
4 of Commerce. Mr. Ferguson, do you represent them?

5 MR. FERGUSON: Yes, sir, and with me  
6 is Mr. Bradshaw Paulin on my left, and I have copies  
7 of the list of appearances.

8 I think I might just review those if  
9 I may, sir.

10 THE COMMISSIONER: Yes, indeed.

11 MR. FERGUSON: This representation is  
12 being made to you, sir, on behalf of the Board of  
13 Directors of the Ontario Chamber of Commerce. Appearing  
14 with me is Mr. F. H. Howard who is First Vice-President  
15 of the Ontario Chamber of Commerce. He is Chief  
16 Engineer of Frigidaire Products of Canada Ltd.

17 Mr. C.J. Clark, Q.C., who is  
18 Chairman of the Employer-Employee Relations Committee,  
19 Ontario Chamber of Commerce. Mr. Clark is from Windsor.  
20 He is a practising lawyer and has had extensive  
21 experience in labour relations matters.

22 Listed then are myself and Mr. Paulin.

23 Then, Mr. T.J. Masters, who is a  
24 member of the Employer-Employee Relations Committee of  
25 the Ontario Chamber of Commerce and he is Supervisor of  
26 Labour Relations of the Labour Relations Division of  
27 the Polymer Corporation Limited.

28 Then we have Mr. J.A. Collins who is  
29 the Manager of the Ontario Chamber of Commerce, Toronto,  
30







1 who is responsible for keeping in motion the wheels  
2 of progress of the Chamber and is, of course, involved  
3 in the coordinating efforts of the Chamber in producing  
4 presentations to you, sir.

5 MR. POLLOCK: I would say, Mr.  
6 Ferguson, just for the record, that although some of  
7 the faces have changed, my earlier remarks apply. We  
8 have read the brief and you are free to present it in  
9 whatever manner you wish.

10 MR. FERGUSON: Thank you, Mr. Pollock.

11 Initially, may I say that in putting  
12 together these representations the committee, together  
13 with whatever assistance I could give them and Mr.  
14 Paulin, adopted the philosophy of trying to place before  
15 you some basic principle statements of the position of  
16 management. We have tried to make some recommendations  
17 and we hope that they are practical ones. We tried to  
18 base our representations only on practical experience  
19 bearing in mind the stated policies of the Chamber  
20 which have been, I think, formulated over many years.

21 We have not chosen in our representa-  
22 tions to give you a whole group of examples of  
23 situations. Quite frankly, we know that the construction  
24 associations intend to appear before you and in their  
25 representations give you many cited examples of  
26 picketing, unlawful picketing, and where injunctions  
27 were obtained. We know that you have had many surveys  
28 of reports on the matter. We know that the Canadian  
29 Manufacturers' Association will have the same type of  
30 references to individual incidents. We thought that we





1 would rather while reserving the right to make further  
2 representations to you if we found it advisable, to  
3 state the basic principles and make some few recommenda-  
4 tions to you. So that we have our thinking in line,  
5 and in order to assist you in frank and open discussion,  
6 I would like to just briefly analyze what we have  
7 covered.

8 As management, as a group, we have  
9 expressed our full resistance to the elimination of  
10 injunctions which would restrain or remove unlawful  
11 picketing. We are unalterably opposed to the resolution  
12 of the Canadian Labour Congress which, in our respectful  
13 view, appear to promote only defiance of the law and of  
14 the courts. We have recommended that there be repeal  
15 of the Rights of Labour Act in the Province of Ontario  
16 so that a union could sue or be sued in our jurisdiction.

17 We have recommended that the normal  
18 type of strike declaration which may not be issued by  
19 the Labour Relations Board be transformed into being a  
20 cease and desist order which could include the removal  
21 of unlawful picketing or the cessation of unlawful  
22 strikes.

23 THE COMMISSIONER: That is, the  
24 declaration of the board that this particular cessation  
25 of work is an illegal cessation.

26 MR. FERGUSON: Yes, that that could be  
27 removed by an order of the court as well as the picket  
28 line, but we do not remove also the right of the  
29 parties to seek relief from the courts on the picketing  
30 alone.







1 THE COMMISSIONER: But you want a  
2 desist order to be issued by the Labour Board.

3 MR. FERGUSON: By the board, that is  
4 right. We have suggested the creation of a central  
5 registry office for the purposes of service of papers  
6 on any interested union in injunction matters. We  
7 believe that this would provide the means of an  
8 adequate short-term notice and remove any stain which  
9 may presently exist in the process of obtaining ex  
10 parte injunctions from the court.

11 Due to the fact that we as employers  
12 are facing more aggravated problems which arise from  
13 the failure of employees to not ratify collective  
14 agreements, we suggest that there be more authority  
15 and responsibility on union negotiators, which will  
16 enable them to settle contracts without the unsettling  
17 and unsatisfactory ratification. We accept the fact  
18 that this recommendation opens up the door to a  
19 suggestion that perhaps giving more authority to  
20 union representatives at the table may seem on the  
21 surface to destroy democracy in action in the union hall  
22 on the question of ratification of contracts, but we  
23 are genuinely concerned over the fact that radical and  
24 irresponsible elements in the trade union movement have  
25 brought about situations where very fair, honourable,  
26 equitable settlements have not been ratified. We  
27 have seen many instances of this in the Province of  
28 Ontario. Particularly in the last year we have seen,  
29 we believe, that the union officials are not being able  
30 to exercise the required responsibility of a union





1 membership. Perhaps they don't want to. But in any case,  
2 we have suggested a means of removing that problem.  
3 It is very unusual, of course, for a management group not  
4 to ratify an agreement. It is usual, of course, when  
5 the negotiators go to the bargaining table for the  
6 company that they have sufficient authority, and we  
7 ask that the union negotiators be given more authority  
8 than they have today.

9 We recommend that there be the  
10 abolishment of strikes and lockouts in all essential  
11 public services, and these be replaced by a system of  
12 compulsory arbitration. We do not attempt to define  
13 our concept of essential public services.

14 MR. POLLOCK: Will you?

15 MR. FERGUSON: But we would be willing  
16 to say at this point that we are dealing with the  
17 service and supply of products and services which, when  
18 faced with an interruption, would bring about severe  
19 loss or hardship to the public or to the business  
20 community, and which would affect the welfare, the  
21 general welfare of the public, of the community or of  
22 the province. There are some obvious examples in our  
23 minds on hospitals, transportation and things of that  
24 nature --- Hydro.

25 We encourage as employers on the  
26 question of injunctions the use and standardization  
27 of material of the highest order, and we support the  
28 fact that an employer must not seek any assistance  
29 from any courts for an improper purpose nor must there  
30 be on any occasion frivolous proceedings brought by an





1 employer.

2  
3 We disfavour the use of the Criminal  
4 Code as a means to the prosecution of employees in  
5 labour matters. We suggest in our brief that strikers  
6 are not criminals, and we suggest that a responsible  
7 employer does not on any occasion take lightly the  
8 opportunity to brand his employees as criminals by  
9 reason of their engaging in a strike. The employees  
10 may be engaged in a strike at the call of a responsible  
11 union leader. It may be an ill-conceived strike. It  
12 may be unlawful, but they have no knowledge of its  
13 unlawfulness. Therefore, we do not support the use of  
14 prosecutions under the Canadian Criminal Code.

15 Subject to any specific recommendations  
16 we make, we do not generally favour any extension of  
17 the powers of the Ontario Labour Relations Board. We  
18 express fear that any extension of powers of the  
19 administrative tribunal would not prove of advantage  
20 to all parties, and we are particularly concerned due  
21 to the fact that so many of the decisions of the  
22 Labour Relations Board, which affect so many of the  
23 fundamental rights of the parties, are not repealable  
24 in any courts.

25 We recommend the supervision of a  
26 secret strike vote by government.

27 We recommend that there shall be no  
28 strike until such a vote has been taken.

29 It has been suggested, I must say,  
30 that strike action may not have diminished through the  
existence of a government supervised vote. I think that







1 the results of surveys conducted out in British Columbia  
2 may be undecisive. In any case, it is our submission  
3 that it is a time for much more cool thinking and calm  
4 thinking, that the existence of a strike is a matter of  
5 great importance to employees, and we believe that the  
6 decision to engage in that strike should be done only  
7 by secret ballot and that the holding of that ballot  
8 should be under strict government supervision.

9 We have in our brief encouraged  
10 the existence of management-labour councils which  
11 unfortunately, in our view, to this date have been  
12 a singular flop throughout the province of Ontario, and  
13 we encourage self-regulation of the parties engaged in  
14 collective bargaining, bearing in mind the promotion,  
15 as we do, of the free system of collective bargaining  
16 with minimum restraints. But we do say, that if there  
17 cannot be self-regulation, then we must support more  
18 government intervention, particularly, of course, in  
19 the field of public service and public and essential  
20 services.

21 Now, we are here and my colleagues  
22 are here to deal with any aspect of these matters which  
23 we have raised and to the best of our ability to  
24 answer any questions which you may have as a result of  
25 the representations we have made.

26 THE COMMISSIONER: On the question of  
27 ratification, how long has this feature of ratification  
28 been normally resorted to? Is it something that has  
29 been accompanying the labour developments in the last  
30 30 or 40 years, or is it a change?



*Nethercut & Young**Toronto, Ontario*

1 MR. FERGUSON: I would think it would  
2 be a very unusual set of circumstances whereby any  
3 company and union would sign a memorandum of agreement  
4 which did not include the requirement of ratification  
5 by employees.

6 THE COMMISSIONER: For how long back?

7 MR. FERGUSON: As far as I could go  
8 back in my own experience of eighteen years, certainly,  
9 I have never seen an adequate memorandum of settlement  
10 which did not contain such a provision.

11 THE COMMISSIONER: Is that the  
12 practice, say, in the United States?

13 MR. FERGUSON: I believe it is.  
14 To the best of my knowledge, there are forms of  
15 ratification in the United States, and certainly this  
16 is the practice here. I think during the last two or  
17 three years this question of ratification has become ---  
18 or lack of ratification has become a very important  
19 matter for the employer. We have had instances where,  
20 in two or three instances settlements had to be taken  
21 back to the employees. Radical elements had got hold  
22 of the power within the bargaining unit, the employer  
23 is left literally in a vacuum and does not know where  
24 he stands. He cannot afford to not deal with the  
25 bargaining committee then existing or he will be  
26 dealing with the representatives of the radicals alone.  
27 On the other hand, he cannot deal with the present  
28 bargaining committee because they appear to have lost  
29 control. He is in a very difficult position.

30 THE COMMISSIONER: What would you







1 suggest?

2 MR. FERGUSON: I suggest that there  
3 be more authority on the part of the union negotiators  
4 to conduct negotiations and reach a settlement, and  
5 when that settlement is reached there not be the  
6 requirement of ratification by employees. In other  
7 words, that the authority given to negotiators is  
8 an authority to reach a settlement and a final settle-  
9 ment on behalf of the employees. Certain limits may  
10 have to be given to that committee.

11 THE COMMISSIONER: What do you mean  
12 by limits?

13 MR. FERGUSON: Limits as to ranges  
14 given to them that they can settle in certain ranges.

15 THE COMMISSIONER: That is in  
16 relation to wages?

17 MR. FERGUSON: In relation to wages,  
18 but give them sufficient authority that when a deal  
19 is made at the bargaining table it is a deal. I have  
20 had situations like that; they have been unique, very  
21 unique.

22 THE COMMISSIONER: In which there  
23 was some latitude of action?

24 MR. FERGUSON: And where the  
25 negotiator when, having reached agreement, said, "Well,  
26 that is the agreement. There is no question of it  
27 having to be ratified". It is a very rare case when  
28 one has it today because, as I say, general practice is  
29 to have this requirement for ratification.

30 Well, as we saw in Stelco and in





1 many other instances there has been this problem of  
2 obtaining ratification.

3 MR. POLLOCK: In your contention they  
4 have power to say yes, but no power to say no?

5 MR. FERGUSON: Which, the employees?

6 MR. POLLOCK: The employees.

7 MR. FERGUSON: The employees have the  
8 power to say "Yes".

9 MR. POLLOCK: The representatives on  
10 the bargaining committee.

11 MR. FERGUSON: The representatives at  
12 the bargaining table have the authority to say, "Yes,  
13 this is a deal", and they also have authority to say,  
14 "No, it is not a deal".

15 MR. POLLOCK: But they can't say, "It  
16 is not a deal and we are going on strike" until they  
17 go back to the employees and ask them to vote on it.

18 MR. FERGUSON: That is the theory, but  
19 that is not the fact.

20 MR. POLLOCK: That would be theory  
21 only, Mr. Ferguson. What would happen in practice is  
22 they would have the right at the bargaining table to  
23 say, "Here is a memorandum of settlement and this is  
24 final".

25 THE COMMISSIONER: What we started with  
26 was an agreement.

27 MR. FERGUSON: Right. "Here is an  
28 agreement". The wording may be put into another  
29 document, but this is an agreement.

30 THE COMMISSIONER: If you haven't





1 reached an agreement you still continue your negotiations  
2 or break them off and say it is impossible.

3 MR. FERGUSON: Right. If you make no  
4 agreement, of course, you have done what you have today.  
5 But we are saying there should be a more effective  
6 manner of reaching an agreement. These people should  
7 have more authority when they go to the bargaining  
8 table.

9 MR. POLLOCK: Should they have  
10 authority to declare a strike if they cannot agree  
11 with the negotiating committee of the company?

12 MR. FERGUSON: Well, I would think  
13 that they are given today in many instances authority  
14 by the employees to call a strike at any time they want.

15 MR. POLLOCK: By a vote of the  
16 membership?

17 MR. FERGUSON: No, not by an other  
18 vote of the membership at all. They are given  
19 authority to call a strike at the time they determine.  
20 That is what they are given sometimes.

21 THE COMMISSIONER: That is by a vote?

22 MR. FERGUSON: By a vote of the  
23 membership conducted at that time, yes, but not by any  
24 subsequent vote. It is not required. We, of course,  
25 tie that down as well by saying that the employees  
26 shall not have the right to go on a strike until such  
27 time as there has been a secret vote by the employees  
28 conducted by the government.

29 MR. POLLOCK: As I understand the  
30 practice of strike votes that do exist, not only in







1 Ontario, but in other jurisdictions other than British  
2 Columbia, a strike vote may take place any time well in  
3 advance. When would you limit the time as far as this  
4 strike vote of which you are speaking is concerned?  
5 When does it occur?

6 MR. FERGUSON: I think we retain  
7 flexibility on that, Mr. Pollock. My own personal  
8 view would be that going to the bargaining table on the  
9 part of a union and from the initial period saying;  
10 "We already have the right to strike" means that this  
11 is not bargaining in good faith. I think that any  
12 strike vote should be conducted only when negotiations  
13 have clearly broken down.

14 MR. PAULIN: May I refer you to page  
15 28 of the brief. There is a recommendation in the  
16 first complete paragraph on that page that Section 54  
17 (3) of the Labour Relations Act be repealed. This is  
18 the one which says that a strike vote taken by a  
19 trade union shall be by ballots cast in such a manner  
20 that a person expressing his choice cannot be identified  
21 with the choice expressed. That is how it now reads.  
22 We are suggesting that this section be replaced by a  
23 section prohibiting a lockout until after a secret vote  
24 by ballot conducted by the Labour Relations Board has  
25 been taken and where the majority of employees have  
26 voted in favour of a strike and we further recommend  
27 that application for the holding of a secret strike  
28 vote be entertained by the Board until the conciliation  
29 procedures have been exhausted.

30 As Mr. Ferguson has pointed out,





1 frequently today even before bargaining commences,  
2 even before bargaining commences you will have the  
3 officers of the trade union or the international  
4 representatives saying, "Now, these are our demands.  
5 Can we have your authority to vote a strike at any  
6 time if we don't get them?", and they say, "Yes".  
7 But, of course, a great many things can happen at the  
8 bargaining table which are not foreseen by either party  
9 before they start. There may be a most attractive  
10 counter-offer made, but here we have this one particular  
11 point, say, which may be a matter of high union policy  
12 which has been developed at the international level  
13 which has made a strike issue in Ontario merely for  
14 the sake of the fact --- and this, I am afraid, is  
15 frequently so --- merely for the fact that unions like  
16 to have a similar provision in all of their collective  
17 agreements. This particular provision, this one point  
18 of union policy to get a given provision in a  
19 collective agreement as a matter of union policy and the  
20 union itself would support and counsel a strike if  
21 that matter were not agreed to by the employer,  
22 regardless of how good the employer's offer may have  
23 been from the point of view of his employees.

24 MR. POLLOCK: I am sure you are  
25 familiar with Professor Anton's book on the strike  
26 where generally his conclusion is that it does not make  
27 any difference whether they have a strike vote or they  
28 don't have a strike vote that is government supervised  
29 and that recently in Manitoba they have repealed that  
30 section of their Labour Relations Act which formerly







1 required a government supervised strike vote and that  
2 the employers in British Columbia are in some measure  
3 opposed to a strike vote government supervised because  
4 it gives the badge of legality or approval to unions.  
5 In the face of those, is that still your position?

6 MR. PAULIN: Yes. I can think of an  
7 example. The post office strike of two or two and a  
8 half years ago when the employees concerned were invited  
9 to attend a meeting at the hall in Montreal, a public  
10 meeting, and the authority for the executive to continue  
11 the strike was requested by a show of hands in such a  
12 way that no one really dared, obviously from the way  
13 the proceedings were conducted, to vote against it.

14 MR. POLLOCK: Assuming it was done  
15 by secret ballot would your objection still pertain?

16 MR. PAULIN: It would because I have  
17 other situations --- this is, of course, not under the  
18 auspices of any government agency, but for the unions  
19 themselves to have a secret strike ballot, they have  
20 one ballot box for yes votes and one ballot box for no  
21 votes.

22 MR. POLLOCK: That is not a secret  
23 ballot. I mean a secret ballot as we understand it.

24 MR. PAULIN: I would prefer to see  
25 this matter handled under the auspices of the Department  
26 of Labour. I am not looking for delays or a device to  
27 delay employees from having the right to go on a strike  
28 when it is lawful for them to do so. I am only looking  
29 to the fact that employees will be guaranteed an  
30 opportunity of expressing their own wishes in a secret





1 manner and I would question whether in many cases they  
2 are now allowed this.

3 THE COMMISSIONER: My recollection is  
4 in the Ford settlement in 1946 there was a provision  
5 to that effect, there had to be a secret ballot taken  
6 under the auspices of the Labour Department. Do you  
7 know whether that is still in the automobile agreement?

8 MR. PAULIN: I don't believe so, sir.

9 THE COMMISSIONER: The company  
10 dropped it. Why?

11 MR. PAULIN: I don't know, sir.  
12 Perhaps it was bargained out of the collective agreement  
13 at a subsequent date for some reason, I don't know.

14 THE COMMISSIONER: It is rather  
15 strange. We certainly have received opinions from  
16 many interested in this that it does not affect what  
17 you imagine it might, that is, the vote of those who  
18 are opposed.

19 MR. PAULIN: But one of the things I  
20 think it would do is this, that when the employer knows  
21 that the strike vote was conducted in this way, then he  
22 knows that it is an honest and secret expression of  
23 opinion by each employee rather than by what the  
24 employees may be told.

25 THE COMMISSIONER: He knows when the  
26 strike actually comes on whether it is general or  
27 special. He sees the number of men who left the plant.

28 MR. PAULIN: Oh, yes, but then again  
29 it depends in some industries ---- I don't want to leap  
30 into another field, but in the construction industry an





1 employee, a member of a trade union in the construction  
2 industry in Ontario may be told by his stewards or by  
3 the officers of his local that there is to be a strike  
4 that morning at ten o'clock and it may be an unlawful  
5 strike. But he does not dare not go out because if he  
6 refuses to, then he is liable to have proceedings taken  
7 against him under the union's constitution.

8 THE COMMISSIONER: Not if it is  
9 illegal.

10 MR. PAULIN: Oh, yes, indeed, sir.

11 THE COMMISSISSIONER: That is contrary  
12 to the Labour Relations Act.

13 MR. PAULIN: That is quite true,  
14 despite that provision in the Labour Relations Act.  
15 If this man's union card is lifted, then he really  
16 suffers a sort of economic death because he cannot work  
17 at his trade.

18 THE COMMISSIONER: Has that not been  
19 fought out in the courts in this province?

20 MR. PAULIN: It has been.

21 MR. POLLOCK: It has or it hasn't?

22 MR. PAULIN: It has. There have been  
23 cases of this sort. I believe, sir, at one time that  
24 you may have even given judgment in one of them, but  
25 this is a most expensive proposition for an individual  
26 to undertake, to take a representations action against  
27 his trade union in order to be reinstated. But in the  
28 meantime he is in the position where he cannot work at  
29 his trade on any construction project in North America.

30 THE COMMISSIONER: Well, would you







1 agree that such a provision in the constitution of  
2 this province should be permitted?

3 MR. PAULIN: No, I certainly think it  
4 ought not to be permitted, but at the same time there  
5 are generally worded clauses in constitutions which  
6 unions rely on. I have, as a matter of fact, seen one  
7 within the last two weeks where an employee was fined a  
8 substantial sum for going to work across a picket line  
9 which clearly was in support of an illegal strike ---  
10 it is something like Section 40 of the Army Act like  
11 it used to read, conduct to the prejudice of good order  
12 and military discipline in that he did so and so. And  
13 he was fined under one of those provisions in the guise  
14 actually of being disciplined under the constitution  
15 for crossing a picket line which had been established  
16 in support of a strike.

17 Of course, an employee whose union  
18 card or his membership is cancelled or suspended in  
19 some way can work on a non-union construction project,  
20 but those are usually the worst paid.

21 MR. POLLOCK: It doesn't take a very  
22 active imagination to conjure up situations where you  
23 can have a union negotiating committee if it is  
24 empowered to make an agreement without any reference or  
25 responsibility to its electorate, arriving at a sweet-  
26 heart agreement.

27 MR. PAULIN: Oh, yes, that is possible.  
28 I am puzzled by the concern that there ought to be the  
29 democracy of the members considered and that their views  
30 ought to be consulted at the stage of going on strike,





1 and yet it doesn't really matter whether they agree or  
2 don't agree with the position as taken by the  
3 bargaining representatives as to the conclusion of an  
4 agreement. Why can't you submit both of them to a vote  
5 at the same time?

6 MR. POLLOCK: You mean the ratification  
7 of settlement?

8 MR. PAULIN: Yes.

9 MR. FERGUSON: Mr. Pollock, they have  
10 authorized those people initially to go and negotiate  
11 for them.

12 MR. POLLOCK: They have also authorized  
13 those people by a ballot in most cases to go on strike,  
14 to announce that they are going on strike.

15 MR. FERGUSON: Well, I think one, of  
16 course, could be related to the other. One is a direct  
17 stoppage of work, closing down a plant. It puts people's  
18 job immediately in jeopardy. That plant may close.  
19 Surely that is a different type of concept than the  
20 other matter.

21 MR. POLLOCK: Let me put an example to  
22 you in the terms that you suggested this morning. The  
23 negotiating committee is authorized by the union to  
24 settle an agreement between \$1.50 and \$2.00 an hour.  
25 The employer says to the negotiating committee, "I am  
26 only prepared to give you \$1.25 an hour". No agreement.  
27 Why cannot the union membership say to the negotiating  
28 committee, "If you can settle an agreement between \$1.50  
29 and \$2.00 an hour, take it. If you can't, we are  
30 voting now to go on strike", and then you can take that







1 position to the bargaining table with you and if the  
2 employer is only prepared to give you \$1.25, not within  
3 this bracket, then you are authorized to go on strike.

DRY/SS 4 MR. FERGUSON: Mr. Pollock, with all  
5 dues respect, it would be great theory, but it has  
6 never worked that way in practice. People say all kinds  
7 of things in collective bargaining initially. They  
8 will say, "If we don't get \$1.50 we will go out on  
9 strike". We have heard these things said to us time and  
10 time again at the bargaining table, but when it really  
11 gets down to the guts of the situation, those sentiments  
12 are not expressed.

13 MR. POLLOCK: To the bargaining-in-good-  
14 faith sessions?

15 MR. FERGUSON: That is right, yes.

16 MR. POLLOCK: Do you think that the  
17 government supervised strike vote will alter that  
18 situation, notwithstanding that in all the experience  
19 in all the provinces in Canada that have government  
20 supervised strike voting the statistical analysis  
21 demonstrates that the percentage of support for the  
22 strike has increased in all circumstances where the  
23 government has supervised this strike vote?

24 MR. FERGUSON: Well, the Chamber  
25 believes that it is a matter which would bring about  
26 greater stability and less strikes.

27 MR. POLLOCK: There must be some  
28 peculiar factors in Ontario.

29 MR. FERGUSON: There seem to be some  
30 peculiar factors in the Ontario Labour Relations Act.





1 MR. POLLOCK: I am not saying that  
2 facetiously.

3 MR. FERGUSON: No, I think there are  
4 some peculiar factors in Ontario. There are many  
5 factors in the trade union movement itself.

6 THE COMMISSIONER: Let us consider  
7 just a few of the strikes with which you have been  
8 personally associated, Mr. Paulin. What would you say  
9 about, say, striking employees who go out on the  
10 first day, return before the strike is settled? Have  
11 you anything specific on that or any general judgment?

12 MR. PAULIN: The general tendency  
13 for this to happen is becoming less and less with the  
14 fact that it is made most unattractive for employees to  
15 change their minds and go back to work because of the  
16 type of picketing they encounter at the gates to the  
17 plant. They are physically afraid to go back to work.

18 THE COMMISSIONER: Assuming you have  
19 a restriction such as an order of the courts for two,  
20 three or four pickets?

21 MR. PAULIN: Then, they will tend to  
22 go back to work, but they are also subject to harrass-  
23 ment at home, damage to property, threatening phone  
24 calls at four and five o'clock in the morning and  
25 tactics of that sort which I do not say are confined  
26 to Ontario; I think they are probably found in every  
27 jurisdiction of the world wherever trade unions are to  
28 be found.

29 THE COMMISSIONER: Would you say, then,  
30 the return to work of the strikers plays no substantial





1 part in the settlement?

2 MR. PAULIN: Oh, it does, sir. In  
3 some cases it may very well do. In some cases all of  
4 the employees come back and there is never any  
5 collective agreement signed with the trade union which  
6 had become the bargaining agent.

7 THE COMMISSIONER: I am dealing with  
8 where you have an outstanding number?

9 MR. PAULIN: I cannot say there is any  
10 particular pattern because it depends to a large extent  
11 on the nature of the industry and the type of work that  
12 the people do.

13 MR. FERGUSON: If I may say so, sir,  
14 one is more likely to find that with the employer who  
15 has the smaller number of employees, that there is a  
16 tendency of those employees to return to work after  
17 they have engaged in the strike because there is a  
18 closer association with the employer. With the large  
19 employer with the large work force you are less likely  
20 to have a return to work.

21 THE COMMISSIONER: What about strike-  
22 breaking, that is, bringing men in from outside plant  
23 personnel?

24 MR. PAULIN: With great respect, I  
25 don't agree with your term "strikebreakers".

26 THE COMMISSIONER: Well, whatever you  
27 call them. That was given to me as one of the accepted  
28 terms.

29 MR. PAULIN: I think the employer has  
30 the right to carry on his business.







1 THE COMMISSIONER: I am not talking  
2 about that. I am talking about the actual employment of  
3 those who are engaged outside of the original force, and  
4 its effect has been to break the strike.

5 MR. POLLOCK: Just for the purpose of  
6 communication only, Mr. Paulin, scabs are those who  
7 come back to work within the force and strikebreakers  
8 are those who come to work outside the original force.

9 THE COMMISSIONER: That is the way in  
10 which I used the terms and I thought you objected to  
11 that.

12 MR. PAULIN: No, it is not a question  
13 of strikebreakers. I am familiar with the terms --- I  
14 don't necessarily say I adopt them; I know what they  
15 are generally meant to mean. I think the connotations  
16 in the trade union movement are akin and perhaps  
17 analogous to that of "murderer" or something like that.  
18 In industrial relations parlance those are very strong  
19 words indeed.

20 MR. POLLOCK: Can you think of a  
21 better euphemism ---- "replacement worker" ---- how is  
22 that?

23 MR. PAULIN: Whatever we call them,  
24 if we have people hired to come to work during a strike  
25 to carry on the employer's operations, I think within  
26 the last two or three years I can only think of perhaps  
27 one or two instances where this has been done in which  
28 I have been engaged. I think the tendency is to  
29 put great pressure on the trade union either to close  
30 the operation down entirely or get the strike settled.





1 In most cases, I believe it is only in the case of a  
2 small employer where this happens.

3 THE COMMISSIONER: I was going to ask  
4 you, what size of working force would those two or three  
5 instances represent?

6 MR. PAULIN: This would be in plants  
7 with a working force of less than 300 people --- perhaps  
8 100 people.

9 THE COMMISSIONER: To what extent  
10 would they replace the strikers by new employees?

11 MR. PAULIN: On a permanent or temporary  
12 basis?

13 THE COMMISSIONER: Well, do they bring  
14 them in temporarily or permanently, or what?

15 MR. PAULIN: They hope to bring them  
16 in only temporarily, I should think, because of the  
17 fact that the people who normally do the work and who  
18 are familiar with it and have the skills to perform it  
19 are not there, and these people come in and do what  
20 work can be done in an imperfect way during the period  
21 that the others are out on strike.

22 THE COMMISSIONER: If it is a skillful  
23 requirement, the probabilities are that they cannot  
24 supply too many skilled men.

25 MR. PAULIN: No, they cannot.

26 THE COMMISSIONER: Does that mean  
27 they would go on a partial production?

28 MR. PAULIN: They do, sir, to some  
29 extent.

30 THE COMMISSIONER: I suppose as that







1 skill reduces its requirement, more persons can be  
2 brought in.

3 MR. PAULIN: Yes, and the level of  
4 production increases and the quality of the product  
5 increases, and the tendency may be --- and I know of  
6 one or two cases where the strike literally collapsed  
7 --- again this is in the case of small plants.

8 THE COMMISSIONER: When you say  
9 "small", would that be 300?

10 MR. PAULIN: No, that would be less  
11 than 300. That would be 150 at the most, of people in  
12 the bargaining unit. Of the 150 in the bargaining unit  
13 a great number of them would give up and they would go  
14 voluntarily and obtain employment elsewhere.

15 THE COMMISSIONER: Does that mean they  
16 severed their relationship?

17 MR. PAULIN: They severed their  
18 relationships entirely. Some of them are rehired  
19 gradually over a period of time, unless there is an  
20 actual settlement with the union where in one case I  
21 recall there was no collective agreement entered into.  
22 The union acknowledged the strike had not been a success  
23 and did its best to persuade the employer to take back  
24 as many of his former employees as possible.

25 THE COMMISSIONER: You say that was  
26 really caused by outside involvement?

27 MR. PAULIN: It was caused by the fact  
28 that the employer was able to operate his plant  
29 during the strike.

30 THE COMMISSIONER: Yes, by getting





1 others.

2 MR. PAULIN: Yes. If the plant had  
3 been closed during the strike, then I cannot say what  
4 the result would have been.

5 THE COMMISSIONER: The only way in  
6 which it could be closed would be what?

7 MR. PAULIN: The only way in which it  
8 could be closed would be in several ways, really: The  
9 employer may decide that he will not try to operate  
10 his plant during the strike. He may try to operate  
11 his plant during a strike and he may find the he cannot  
12 get adequate staff and then he will close his plant.  
13 He may find that the temporary people he has got coming  
14 in to work for him ---- the strikebreakers and scabs,  
15 as Mr. Pollock put it --- he may find that those people  
16 are literally driven away from working for him because  
17 of intimidation, coercion or actual property damage  
18 or bodily injury.

19 THE COMMISSIONER: Have you experienced  
20 actual cases of that?

21 MR. PAULIN: Oh, yes, sir.

22 THE COMMISSIONER: What followed that  
23 damage? Was there any prosecution of any sort?

24 MR. PAULIN: No, sir. I find that in  
25 cases of assault there is usually prosecution, but the  
26 charges are frequently laid then by the police officers  
27 who may be on the scene, and if individuals go down and  
28 swear out informations against those who assault them,  
29 then in many cases when the strike is settled there  
30 seems to be a tendency to try to clean the slate as much





1 as possible, and any information like that if possible  
2 is withdrawn, if the Crown will agree to its withdrawal,  
3 and any civil proceedings that have been commenced are  
4 usually either dismissed on consent or they are held at  
5 the level that they have reached without any further  
6 steps being taken.

7 THE COMMISSIONER: There is no  
8 suggestion that they undertake not to prosecute a  
9 criminal?

10 MR. PAULIN: There may be an undertaking  
11 not to press a prosecution which has been started.  
12 There may be even suggestions that one will not  
13 prosecute, but this is generally made conditional upon what  
14 the Crown Attorney may have to say. The matter, of  
15 course, is in his hands at the time.

16 THE COMMISSIONER: Would that be free  
17 from all taint?

18 MR. PAULIN: No, sir.

19 MR. FERGUSON: Prosecutions under  
20 the Labour Relations Act would certainly be included  
21 in any settlement that would be insisted on.

22 MR. PAULIN: We are talking about the  
23 Criminal Code.

24 THE COMMISSIONER: Would you mind  
25 giving us short statements of the actual occasions  
26 which you can recall, the strikes, the number of persons  
27 involved, the length of time of the strike.

28 MR. POLLOCK: Virtually, those items  
29 that are set out in the second part of the agenda that  
30 was provided --- if you don't have a copy I will







1 certainly see that you get one.

2 MR. FERGUSON: Those are related to  
3 certain experiences and we have not adopted the policy  
4 of having the Chamber file those. We have many of them  
5 in our own office and we have intended, if we do have  
6 the opportunity, to make those available to you. Those  
7 are our own specific cases.

8 THE COMMISSIONER: Yes, just to see  
9 the actual consequences --- what took place. Did men  
10 come in and the union break down, and if it did, what  
11 followed? Assuming you had the union on one side and the  
12 company on the other and everything else eliminated,  
13 then you would have a contest of endurance.

14 MR. PAULIN: You would, sir, and it  
15 would depend to an enormous extent, the outcome of  
16 the contest, as to the economic strength of the  
17 parties. For a small company and a powerful union,  
18 or whether it were a strong company with one of the  
19 smaller, weaker unions.

20 THE COMMISSIONER: I suppose it comes  
21 down to that.

22 MR. PAULIN: It does indeed.

23 THE COMMISSIONER: Sometimes you say  
24 you have a weak union against a strong employer.

25 MR. PAULIN: Yes, but it is usually  
26 the other way around.

27 THE COMMISSIONER: But that really is  
28 confined to industry that has 300 and under?

29 MR. PAULIN: Yes, that is confined to  
30 the smaller employer.



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THE COMMISSIONER: Well, we will  
adjourn now until two o'clock.

---Luncheon adjournment.







1/FN/SS 1 ---On resuming at two o'clock p.m.

2  
3 MR. FERGUSON: Sir, when I had the  
4 pleasant opportunity of discussing some matters with  
5 you and with my colleagues here I believe I mentioned  
6 to Mr. Pollock the fact that we would file with you a  
7 report of the Silk Commission in regard to the  
8 establishment of arbitrators and school of arbitrators.  
9 I wanted to file it with you and place it on the record.

10 There are specific recommendations  
11 included in that, in particular, the establishment of  
12 a school of arbitrators under the Department of Labour;  
13 also there was a recommendation that judges be retained  
14 in service and be able to perform the duties under  
15 arbitration. I might say that the government seems to  
16 completely ignore the recommendations or if they  
17 have not ignored them, they have not been implemented.  
18 This is one of the few times when labour and management  
19 submitted a unanimous report to the government.

20 MR. POLLOCK: That is probably what  
21 caused them to be suspect.

22 MR. FERGUSON: They may have been  
23 suspect.

24 THE COMMISSIONER: They may have been  
25 shocked.

26 MR. FERGUSON: But very extensive  
27 representations were made to that Commission and I  
28 sat on it and I hope that you will find it of interest.

29 I wonder, sir, if we may take the  
30 liberty of returning to the subject of the employment or





1 use of strikebreakers.

2 THE COMMISSIONER: Yes.

3 MR. FERGUSON: I will use that phrase.

4 I hope Mr. Paulin won't be insulted if I use the phrase,  
5 but I would like to deal with it because this is a  
6 question that obviously must be of concern to the  
7 small employer and the large employer. Now, any  
8 restriction or regulation on the use of strikebreakers  
9 leads me to an analysis of the reason for the strike.  
10 Quite obviously, there are many instances where a  
11 strike is called in our province and as a result of no  
12 bargaining or as a result of the failure of one party  
13 to bargain in good faith as a result of union policies  
14 or politics and one has to distinguish that from the  
15 case where there just is a breakdown in the negotiations  
16 of honest, not successful, but honest negotiations in  
17 collective bargaining.

18 One has to distinguish between a  
19 large employer and a small employer. Without any doubt,  
20 and I think with very few exceptions, the large  
21 employer when faced with a strike, having calculated  
22 all of the problems which arise, is probably shut down  
23 at the time of the strike for two prime reasons ---- first,  
24 that he cannot produce, he must rely on too many  
25 people, too many key people, too many key personnel  
26 spread throughout a large plant. he cannot operate  
27 successfully. Secondly, he is faced with danger to his  
28 plant premises, this large employer, and that would be  
29 another reason.

30 THE COMMISSIONER: You might just





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1 elaborate on that a bit.

2 MR. FERGUSON: He is fearful of damage  
3 to his plant premises.

4 THE COMMISSIONER: Has there been any  
5 considerable extent of that?

6 MR. FERGUSON: Yes, in some cases there  
7 have been extensive problems of damage to plant premises.

8 MR. POLLOCK: Positive damage in the  
9 sense that damage was actually intentionally inflicted  
10 or negative damage in the sense that pipes froze?

11 MR. FERGUSON: No, damage inflicted  
12 on a plant. We recall in Hanover, Ontario about three  
13 years ago there was a legal strike in the plant of a  
14 company engaged in the furniture business, cabinet  
15 making. Here there was violence on the picket line,  
16 there was extensive damage to the plant itself.  
17 Windows were broken, machinery was broken, there was  
18 extensive damage and we have seen cases where there  
19 have been threats of personal violence, and of course,  
20 there has been injury to trucks and injury to personnel.  
21 This is another reason why an employer is reluctant to  
22 carry on.

23 THE COMMISSIONER: Take that case you  
24 spoke of in Hanover about the machinery being broken,  
25 how long was the strike on, just roughly?

26 MR. FERGUSON: Mr. Paulin, maybe you  
27 could tell me the length of the strike.

28 MR. PAULIN: It was approximately  
29 six weeks.

30 THE COMMISSIONER: And what was the







1 result?

2 MR. FERGUSON: Well, the employer felt  
3 that due to all of the circumstances he could not carry  
4 on business any longer. He employed people who  
5 normally worked on farms to come into his plant. He  
6 tried to carry on his production. The same people, these  
7 farmers would go home at night and find that all of  
8 their cows had been killed --- their tires on their cars  
9 were all slashed. It was a very violent and unfortunate  
10 type of strike.

11 THE COMMISSIONER: Do you know why they  
12 came out?

13 MR. FERGUSON: I believe they came out  
14 in regard to getting an injunction.

15 MR. PAULIN: This is about the only  
16 case I know of personally, sir, where the strike was a  
17 lawful one, but because of activity on the picket line  
18 the court enjoined all of the picketers, but  
19 notwithstanding that shortly after that took place the  
20 employer again tried to commence operations during the  
21 strike and that lasted for about two or three weeks and  
22 then there were literally mob scenes at the plant  
23 premises where cars were overturned notwithstanding the  
24 injunction and it got to the point where the police  
25 of this small community were unable to control the  
26 situation and the provincial police came in.

27 THE COMMISSIONER: What was the number  
28 of the working force?

29 MR. PAULIN: Approximately, I believe,  
30 about 300.





1 MR. POLLOCK: Was it a manufacturing  
2 industry?

3 MR. PAULIN: It was a manufacturing  
4 industry.

5 MR. FERGUSON: Hanover Wood Products.

6 THE COMMISSIONER: Skilled or semi-  
7 skilled?

8 MR. POLLOCK: Both skilled and semi-  
9 skilled.

10 THE COMMISSIONER: Could he have  
11 obtained all the men he wanted if there had been no  
12 interference?

13 MR. PAULIN: Yes. The reason for the  
14 interference was, I think, that the production of the  
15 plant was coming back to normal without the collective  
16 agreement having been entered into.

17 THE COMMISSIONER: What was the end  
18 result? What became of the people who he had employed?

19 MR. PAULIN: The end result was that  
20 when the union and the employer sat down and negotiated  
21 a collective agreement all of the permanent employees  
22 who wished to come back, who had been there before the  
23 strike, did come back.

24 MR. POLLOCK: Was this the first  
25 agreement?

26 MR. PAULIN: The first agreement, yes.

27 MR. POLLOCK: And what was the matter  
28 in dispute?

29 MR. PAULIN: The matter in dispute, I  
30 think, was the fact that the employer and the union had







1 two or three meetings and they just were miles and miles  
2 apart on all of the basic points in the collective  
3 agreement and they didn't get together until after  
4 this unfortunate strike had taken place.

5 THE COMMISSIONER: And in the end  
6 how did the terms square with the position of the  
7 leading party?

8 MR. PAULIN: Well, the employer ----  
9 we have recently negotiated a second collective  
10 agreement which is now in effect and the strike, and I  
11 don't know the causes, whether it was the strike,  
12 whether it was the terms of the settlement or whether  
13 it was perhaps conditions in the industry, but the  
14 employer I understand is insolvent.

15 THE COMMISSIONER: Is the business  
16 being carried on today?

17 MR. PAULIN: By a receiver, I  
18 understand.

19 THE COMMISSIONER: And what is the  
20 population of this town or whatever it may be?

21 MR. PAULIN: Approximately 5,000, I  
22 believe.

23 THE COMMISSIONER: Was this only one of  
24 a number of industries?

25 MR. FERGUSON: Yes, there were related  
26 industries, many of them, sir, and the union involved  
27 which was the International Woodworkers of America had  
28 bargaining rights in practically every other plant in  
29 Hanover. They had a very substantial support in the  
30 town itself.





1 MR. POLLOCK: Is it your position that  
2 the reason the plants are all insolvent is because of  
3 the wage demands?

4 MR. PAULIN: Not all of the plants,  
5 I am saying this particular plant.

6 MR. POLLOCK: It was wage demands?

7 MR. PAULIN: I am saying I don't know  
8 whether it was as a result of the strike, whether it was  
9 as a result of the conditions in that particular  
10 industry or whether it was as a result of the settlement  
11 that was negotiated. I don't know that.

12 THE COMMISSIONER: No proceedings  
13 were taken at all in respect of any of the damage?

14 MR. PAULIN: No, there were no civil  
15 proceedings at all other than the original action for  
16 damages.

17 THE COMMISSIONER: Criminal?

18 MR. PAULIN: Criminal I don't know, sir.  
19 I don't recall. I don't believe so.

20 MR. POLLOCK: I assume you went  
21 through the conciliation stages and it was all lawful.

22 MR. PAULIN: We didn't get in until  
23 the strike began and the picketing began.

24 MR. POLLOCK: They followed all the  
25 procedures and then the strike began. How long did it  
26 last? Was there picketing immediately?

27 MR. PAULIN: Yes, there was.

28 MR. POLLOCK: Token picketing?

29 MR. PAULIN: No, there was mass  
30 picketing and we obtained an injunction limiting the





1 number of pickets to, I think perhaps, three or four at  
2 each entrance to the plant and that injunction order  
3 was more or less ignored.

4 MR. POLLOCK: For how long did that  
5 continue? Oh, I see, it was ignored.

6 MR. PAULIN: It was more or less  
7 ignored. There was an incident of violence on the  
8 picket line and people going into work had been  
9 attacked and a motion was brought to commit certain  
10 individuals for contempt of court for disobeying the  
11 injunction order and that motion was dismissed without  
12 costs for, I believe, lack of evidence in circumstances  
13 I don't precisely recall and there was also a motion  
14 brought for an order removing all pickets and, as I say,  
15 it is the only legal strike in my experience where the  
16 order was made.

17 THE COMMISSIONER: Is there any  
18 newspaper account of this in detail?

19 MR. PAULIN: I should imagine there is,  
20 sir. I believe it was in the Toronto press and  
21 certainly in the local press.

22 MR. FERGUSON: We will supply you with  
23 that.

24 MR. POLLOCK: I think this may be one  
25 of the actual experiences that Mr. Paulin might include  
26 when he gets back to the luxury of this leisure in his  
27 office.

28 MR. FERGUSON: I hope there won't be  
29 too much leisure.

30 MR. PAULIN: I think Mr. Pollock means







1 I can perhaps do this in my spare time on Sunday  
2 afternoon or something like that.

3 MR. POLLOCK: Sunday afternoon is not  
4 my spare time.

5 MR. FERGUSON: Undoubtedly in a small  
6 plant one would find circumstances where the employer  
7 is more likely to carry on at the time of a legal  
8 strike. He may be tempted to carry on because he feels  
9 that he can use some supervisory staff to conduct some  
10 phases of his manufacturing. He will not be as  
11 concerned over the protection of his property, his  
12 plant: He will be able to organize proper protection  
13 for his employees and proper transportation facilities  
14 for those employees who want to come to work.

15 Now, the question arises about the  
16 employment of people by that employer to withstand the  
17 economic pressure of a strike. Let us assume --- I don't  
18 think it becomes necessary for me to try to protect  
19 the position of the employer to carry on his business  
20 when he has bargained in good faith and the union has  
21 not bargained in good faith. Surely, I don't with  
22 respect think any employer has to answer that one.  
23 Let us assume that both parties have bargained in good  
24 faith and there is a strike and we have the smaller  
25 employer who tries to carry on his operation and he  
26 hires other people to work in his plant. I don't support  
27 the position that this employer should be able to  
28 permanently displace his employees with these other  
29 people. These people are deemed to be employees while  
30 they are on strike. I believe that unless they take





1 some positive steps to sever their own employment their  
2 employment should be protected, if within reasonable  
3 time limits they wish to return to the employ of this  
4 particular employer. Therefore strings or conditions  
5 should be attached to the employment of people who are  
6 brought in to work during the term of the strike. I  
7 think most responsible employers do that. I recall  
8 there were claims made, I know, by the Royal York Hotel  
9 when they had their long strike that it would take years  
10 before the staff involved in the strike would be brought  
11 back to work. My recollection of what Mr. Zambri, the  
12 union organizer, told me after the strike was that it  
13 would take about three or four months before most of  
14 the strikers were back at work. So I believe ---- and  
15 I am sure the Chamber does support some degree of  
16 protection for the employment of those who legally  
17 engage in a strike. On the other hand, we are  
18 unalterably opposed to any laws or regulations which  
19 would prohibit the employer from carrying on his  
20 business. He has a right to withstand economic pressure.

21 Now, under today's so-called affluent  
22 society an employee who is out on strike has no squeeze.  
RY/SS 23 He can get a job. Either he gets a job or he gets  
24 substantial support from the trade union having  
25 bargaining rights. So, there is no economic pressure  
26 on the employee. He can stay out for a long time.  
27 He can go out and get another job.

28 THE COMMISSIONER: Well, now, is that  
29 really so? Do you think you can say that striking  
30 groups of that sort are in a position to stay out







1 indefinitely?

2 MR. FERGUSON: We have seen strikes,  
3 sir, where ---- there was one recently in Timmins,  
4 Ontario ---- the plumbers were out on strike in Timmins,  
5 Ontario for thirteen weeks, and the representative of  
6 the plumbers' union told me it didn't matter if it went  
7 on for thirteen years; there was not one of them not  
8 fully employed.

9 THE COMMISSIONER: Oh, they went to  
10 other work, you mean?

11 MR. FERGUSON: Yes, the union got  
12 them other work. Today it is quite a common occurrence  
13 for employees going out on strike to acquire other  
14 employment. Some of them acquire better employment and  
15 leave.

16 THE COMMISSIONER: And they leave.  
17 Do they make any distinction between taking temporary  
18 employment and taking permanent employment?

19 MR. FERGUSON: I think in all fairness  
20 if an employee wishes to return to his original  
21 employer he may seek temporary employment.

22 THE COMMISSIONER: Suppose you are not  
23 given that privilege of seeking other employment?

24 MR. FERGUSON: I don't, with respect,  
25 wonder --- I wonder how it could ever be policed. I  
26 think it would bring about an unnecessary hardship on  
27 him. He would get paid from the union, anyway, if he  
28 could not get a job.

29 THE COMMISSIONER: It depends upon  
30 the strength of the union, I suppose.





1 MR. FERGUSON: In many cases it would.

2 THE COMMISSIONER: Do you think the  
3 injury to the business is really greater than that to  
4 the union? You have the loss of profits, the loss of  
5 wages, partly accommodated by the strike allowance.

6 MR. FERGUSON: The loss of revenue to  
7 the union through checkoff, the loss of wages, the loss  
8 of business, maybe a permanent loss of business, a  
9 permanent shutdown. It is difficult for one to equate  
10 all those economic forces, but if the employer was  
11 unable to hire anyone to run his plant, that would  
12 mean that on every strike, no matter the reason for the  
13 strike, it was guaranteed automatic success.

14 THE COMMISSIONER: That is the case  
15 with the employer certainly over 500.

16 MR. FERGUSON: In the very large  
17 plant.

18 THE COMMISSIONER: You can't get  
19 either the men or the skill.

20 MR. FERGUSON: No, in a large plant  
21 the plant would close down and most of them do close  
22 down. That does not guarantee the success of the  
23 strike.

24 THE COMMISSIONER: Oh, no, no. We are  
25 just speaking about the fact of closing up the activity.

26 MR. FERGUSON: There would be a  
27 closing up.

28 THE COMMISSIONER: You take any of  
29 these large strikes --- the automobile industry --- and  
30 I am taking Sudbury, where that plant is what they call





1 "struck", then its operations cease.

2 MR. FERGUSON: I think, with respect,  
3 sir, one must distinguish between the very large  
4 manufacturer who has a stabilized relationship with the  
5 union, and who may have strikes from time to time, and  
6 when he does there is a complete shutdown, and the  
7 vast majority of employers who do not enjoy that form  
8 of stability.

9 THE COMMISSIONER: That may be; I  
10 think that is right. I was wondering, where would you  
11 draw the line roughly between a company that must submit  
12 to that and one that is not compelled by it?

13 MR. FERGUSON: I would find it so  
14 difficult to do it because of this reason --- and I am  
15 not hedging about it: I find it impossible because of  
16 this fact, that there are very large employers who have  
17 multiple numbers of small plants, and one of those  
18 small plants might manufacture one particular product.  
19 It may be in exactly the same position in withstanding  
20 the strike as some small single employer with one plant.  
21 So, I find it very difficult to distinguish between  
22 them. The thing that worries me ----

23 THE COMMISSIONER: What is the effect  
24 in that case?

25 MR. FERGUSON: I think the effect in  
26 that case would be that one small plant of a multi-plant  
27 organization may be able to withstand a strike.

28 THE COMMISSIONER: Because it is  
29 associated with the others?

30 MR. FERGUSON: No, not necessarily, sir,







1 because it may be the smaller plant in a very small  
2 community is the only operation in that community.

3 THE COMMISSIONER: Assuming these  
4 plants had a collective interest, that A was established  
5 and B was here, but they all contributed to the ultimate  
6 product.

7 MR. FERGUSON: With respect, sir, they  
8 may not. They may be completely independent operations.

9 THE COMMISSIONER: Well, that is so,  
10 yes.

11 MR. FERGUSON: That is why I find it  
12 difficult to draw the line. You have to analyze what  
13 type of community; what are the community interests;  
14 are there competitive factors? For instance, in Hanover,  
15 as we always said, I believe the International  
16 Woodworkers of America seemed to own everything except  
17 the Chinese laundry in Hanover, and this was one of the  
18 major problems faced by the employer. Perhaps he was  
19 quite wrong in withstanding economic pressure. I don't  
20 think he ever anticipated that the strength of the  
21 I.W.A. in Hanover would turn out to be what it was.

22 THE COMMISSIONER: When you speak of  
23 the strength, you mean merely the stoppage strength?

24 MR. FERGUSON: No, the strength of  
25 him --- this particular organization in Hanover was  
26 able to convince other employees in other plants in  
27 Hanover to leave work and become engaged in mass  
28 picketing. This was the type of strength which he had  
29 not anticipated would exist in a place like Hanover.

30 THE COMMISSIONER: But it did not





1 interfere with the fact that they remained employees of  
2 the other plants.

3 MR. FERGUSON: That is correct.

4 THE COMMISSIONER: And they had to  
5 carry out their work there.

6 MR. FERGUSON: Well, they did not  
7 carry out their work there to the extent they were  
8 taken away from work to join a mass picketing line  
9 during working hours.

10 THE COMMISSIONER: There were strikes  
11 in all of these plants?

12 MR. FERGUSON: That is correct, sir,  
13 they brought out employees in the other plants and  
14 management in the other plants did not take action  
15 against them because of the fear that the I.W.A. had  
16 too much power. That was what happened in Hanover.  
17 So, to try and draw the line and distinguish between  
18 the large employer and the small employer, and where  
19 the line should be drawn I do not know, but the thing  
20 that concerns any management is that the calling of a  
21 strike may be completely beyond their control, and why  
22 should the employer ever be faced with strike action  
23 with his hands tied behind his back?

24 THE COMMISSIONER: Oh, yes, but I  
25 have no doubt in many cases the primary responsibility  
26 in many cases is on the union, but it may be on the  
27 employer too. You get arbitrary men amongst the  
28 employers as well as amongst the workmen.

29 MR. FERGUSON: I don't say this to  
30 you --- I know the Chamber does not suggest to you ---







1 that there is not an employer who has not bargained in  
2 good faith, who provokes no strike action. It has been  
3 our experience that in most cases that employer may  
4 face more difficulties at the time of a strike, and  
5 perhaps he should face them.

6 THE COMMISSIONER: How would you  
7 regulate that, taking into account the absence of good  
8 faith?

9 MR. FERGUSON: I believe it was  
10 suggested in another brief presented to you about the  
11 conciliation board or the conciliation officer having  
12 some authority in regard to the power of a party to  
13 exert or to withstand economic pressures. Now, that  
14 was the representation of one party. Whether it be  
15 through the process of some other tribunal, that is a  
16 question which must be analyzed. If an employer does  
17 not bargain in good faith, if he provokes strike action,  
18 if he refuses to go to the bargaining table and attempt  
19 to bring about settlement of a collective agreement, I  
20 don't condone his action. I do not suggest he should  
21 be as free under every circumstance as some other  
22 employer who is bargaining in good faith.

23 THE COMMISSIONER: In the Hanover  
24 trouble do you attribute anything that took place there  
25 to the existence of the picket line?

26 MR. FERGUSON: Well, the picket line  
27 itself was just the beginning of a long chain of  
28 circumstances.

29 THE COMMISSIONER: Yes, but you  
30 mentioned the fact there was mass picketing: Was





1 that influential in determining the ultimate outcome?

2 MR. FERGUSON: Oh, yes, because mass  
3 picketing resulted in violence such as turning over  
4 cars.

5 THE COMMISSIONER: When you received  
6 the injunction, did that persist?

7 MR. FERGUSON: Yes, it did, and at  
8 one time we had a report that the Ontario Provincial  
9 Police sent 50 extra police to Hanover to try to  
10 curtail the activities, but they were not successful.  
11 They threw their hands up.

12 MR. PAULIN: There was a riot  
13 after the order.

14 MR. FERGUSON: There was a riot in  
15 the town. We got into the picture late, sir; we were  
16 not involved in the collective bargaining process and  
17 I could make no comment about whether the employer ---  
18 about his behavior at the bargaining table, but there  
19 was a chain of circumstances here which led to this  
20 violence.

21 THE COMMISSIONER: The objection  
22 about pressure there seems to be a combination of the  
23 picketing and the resentment against other employees.

24 MR. FERGUSON: Yes, sir, that is  
25 correct. The employer may have completely underestimated  
26 the circumstances which would arise at the time of a  
27 strike.

28 THE COMMISSIONER: Suppose he were  
29 freed from the pressure of the so-called picket line?

30 MR. FERGUSON: I don't think under a





1 lawful strike he should be freed from the pressure of  
2 peaceful picketing.

3 MR. POLLOCK: What does that mean?

4 MR. FERGUSON: Pickets in reasonable  
5 numbers outside his plant communicating information to  
6 the public and to other employees --- three or four,  
7 perhaps, up to, say, six maximum at an entrance to a  
8 plant. I see nothing which should reduce it.

9 THE COMMISSIONER: But when the  
10 crisis is being approached, that seems to go by the  
11 board, doesn't it? Perhaps not a technical violation  
12 of the restraining order, but the substance of it.

13 MR. FERGUSON: We have seen many  
14 instances where responsible union leaders, knowing there  
15 has been bargaining in good faith where they can  
16 appreciate the position of the employer and the employer  
17 can appreciate their economic demands, they have got  
18 close to a settlement but have been able to settle  
19 it with a reasonable number of pickets and it has not  
20 created a problem.

21 THE COMMISSIONER: In that case what  
22 was the position regarding the employing of outside  
23 people?

24 MR. FERGUSON: In some cases the  
25 plant has tried to carry on and some of the production  
26 is carried on --- half of the production may have been  
27 carried on, but the employer was not satisfied with  
28 that. He could not carry on on that basis. He had  
29 disappointed customers. He had untrained people. His  
30 supervisory staff were working far too long hours.







1 They could not carry on the production.

/FN/SS 2 THE COMMISSIONER: Then it was not  
3 very beneficial for him to be able to say, "I can employ  
4 other people".

5 MR. FERGUSON: I think in many cases  
6 he may have elected that, to do it, to see what happened  
7 as the strike matured. He may have wanted to see.  
8 There is a time period in most strikes where the  
9 parties settle down. Unfortunately, there are  
10 aggravating circumstances, but generally speaking, the  
11 pattern of a strike can be ascertained within a few  
12 days.

13 THE COMMISSIONER: They can reach  
14 that, you know, without any blunderbusses being called  
15 into action.

16 MR. FERGUSON: Yes, they can.

17 THE COMMISSIONER: I mean reach the  
18 critical stage simply by sitting back and doing nothing.

19 MR. FERGUSON: Yes, both parties  
20 can sit back and do nothing.

21 THE COMMISSIONER: And therefore the  
22 exhaustion of endurance will have something to do with  
23 it.

24 MR. FERGUSON: Yes, it could, in some  
25 cases.

26 THE COMMISSIONER: If you could  
27 eliminate both of these trouble sources it might result  
28 in ----

29 MR. FERGUSON: The trouble sources  
30 are in the minds of the labour leaders. Let us look,





1 with respect, sir, at the minds of the workers. The  
2 worker knows that when a strike is over he is going to  
3 get his job back. He knows that.

4 THE COMMISSIONER: Except under  
5 certain circumstances.

6 MR. FERGUSON: He knows in most cases  
7 he will get his job back. He knows that there will be  
8 a settlement. He knows that his union will pay him so  
9 much as long as he walks around with a picket sign.  
10 He may also know that there is alternate employment.  
11 The union may help him get it. We know of many cases  
12 where the union goes out and actively solicits employ-  
13 ment for the people on strike. There is nothing wrong  
14 with that in our view.

15 THE COMMISSIONER: Well, it enables  
16 the strike to be continued. That is in one sense  
17 something wrong with it.

18 MR. FERGUSON: It removes the  
19 financial hardship on the part of the union, and I  
20 would think it was a legitimate exercise on the part  
21 of the union in protecting their membership.

22 THE COMMISSIONER: All right, suppose  
23 you say, "If you take another job you lose the  
24 continuity of your service with us."

25 MR. FERGUSON: I think if the employee  
26 went out and took another job or got a job on  
27 misrepresentation I think he certainly should lose his  
28 employment.

29 THE COMMISSIONER: The things to  
30 endure are, first, the loss of profits and, secondly,







1 the loss of wages.

2 MR. FERGUSON: Right.

3 THE COMMISSIONER: Suppose it were  
4 limited to that question of endurance, would they be  
5 compelled to realize that they were both injuring  
6 their own positions by maintaining that?

7 MR. FERGUSON: There is not only one  
8 party involved on the other side. There are the  
9 employees with their loss of wages and there is the  
10 union and its loss of dues and the union being in a  
11 position to support the employees.

12 THE COMMISSIONER: On that view,  
13 now, if you are right, and all the unions that are  
14 involved in strikes are able to maintain these men  
15 indefinitely, you have a condition that rather forbids  
16 or rather detracts from any tendency to have the  
17 interests forced together.

18 MR. FERGUSON: Well, some of them  
19 are able to continue support for their employees for  
20 a considerable length of time; some of them are not.

21 THE COMMISSIONER: Why aren't the  
22 employees able to continue it indefinitely if they are  
23 associated with a highly responsible and highly  
24 organized union?

25 MR. FERGUSON: Why are they not?

26 THE COMMISSIONER: Yes, why don't they  
27 continue indefinitely because you admit they come to a  
28 critical point?

29 MR. FERGUSON: I think they want  
30 security of employment. They don't want strikes.





1 THE COMMISSIONER: You say they know  
2 they are going back ultimately?

3 MR. FERGUSON: I am sure they don't  
4 want strikes.

5 THE COMMISSIONER: Then let us take  
6 that, they don't want strikes.

7 MR. FERGUSON: I have often said  
8 that if employees engaged in a strike for a period of  
9 time, that if those employees were given the right to  
10 vote on returning to work by secret ballot I have often  
11 said that I believe many of them would vote to go back  
12 to work.

13 THE COMMISSIONER: I daresay some of  
14 them would, but they were very anxious to strike at  
15 the beginning.

16 MR. FERGUSON: They were, exactly.  
17 Like many employers are. We have always been amazed  
18 at the employer who says, "Well, if we have a strike  
19 next week we know that none of the boys will go out,  
20 none of them will go out, they will all be at work",  
21 and mind you, then we would receive a telephone call  
22 on the day of the strike saying 100% of them were out.  
23 That is how wrong the employer can be sometimes or  
24 vice-versa. The employees, of course, vote to go out  
25 on strike, but then they face the reality of a strike  
26 and the employer faces the reality of his plant being  
27 shut down.

28 THE COMMISSIONER: The high pressure  
29 mark of their pugnacity is more or less at the  
30 beginning.





1 MR. FERGUSON: Yes.

2 THE COMMISSIONER: Then it gradually  
3 slopes and reduces until it disappears.

4 MR. FERGUSON: Right.

5 THE COMMISSIONER: Why not let it go  
6 that way and keep other forces away? Let them see what  
7 they can endure if that is the resort that they think  
8 is the one that ought to be followed?

9 MR. FERGUSON: Well, we believe that  
10 there should be procedures to reduce the term of any  
11 strike or the likelihood of any strike. We believe  
12 that these pressures which are now made available or  
13 the weapons now made available to the unions and to  
14 the employers have been successful in many cases.

15 THE COMMISSIONER: These pressures?

16 MR. FERGUSON: Yes.

17 THE COMMISSIONER: I am assuming that  
18 the pressures have been removed by being abolished.

19 MR. FERGUSON: Well, I would be  
20 inclined to believe that the removal of such pressures  
21 would only mean one thing as far as the employer is  
22 concerned. He knows from the beginning of a strike  
23 that his plant will automatically close down. This is  
24 the smaller employer.

25 THE COMMISSIONER: Yes, let us assume  
26 that.

27 MR. FERGUSON: There is no balance  
28 of power. All the union has to do in collective  
29 bargaining is say, "Next Tuesday you close", and they  
30 know what his inventories are, they know what his orders







1 are.

2 THE COMMISSIONER: He stops his work.

3 MR. FERGUSON: He can't bargain.

4 THE COMMISSIONER: What do you mean he  
5 can't bargain?

6 MR. FERGUSON: He can't bargain in good  
7 faith then. He is through at the bargaining table.

8 THE COMMISSIONER: I wouldn't say that.  
9 You can bargain in good faith at any time if you are  
10 so minded.

11 MR. FERGUSON: But he cannot win, sir,  
12 if anybody wins.

13 MR. POLLOCK: He cannot win on his  
14 terms.

15 THE COMMISSIONER: What we are  
16 speaking of would be endurance power.

17 MR. FERGUSON: My point is he must  
18 give the union practically everything it requests even  
19 though it be irresponsible because he will have to shut  
20 down his plant next Tuesday when he knows that his  
21 best customer must have delivery on Friday. Now, this  
22 is not a balance of power in our respectful opinion.

23 THE COMMISSIONER: That may be a  
24 special feature or a special factor in that particular  
25 strike, but take the normal case where his business  
26 is going on as usual, he wants to perform his contracts,  
27 of course, but he knows he will not be able to if he  
28 holds out to a degree that he has to surrender in the  
29 ultimate determination.

30 MR. FERGUSON: The thing that worries





1 me is you have to have a counterbalance of power.

2 THE COMMISSIONER: Yes.

3 MR. FERGUSON: And I know that you  
4 cannot force a man to work.

5 THE COMMISSIONER: That is quite true.

6 MR. FERGUSON: And I also know that  
7 you shouldn't be able to force a man not to work.

8 THE COMMISSIONER: No, but if he  
9 insists upon working you can deprive him of privileges  
10 which you give him at the outset.

11 MR. FERGUSON: The only thing, sir,  
12 I believe that the man wants, he wants salary, money,  
13 wages for his family.

14 THE COMMISSIONER: Yes.

15 MR. FERGUSON: And I don't think any  
16 proper regulation should prohibit the man from making a  
17 living.

18 THE COMMISSIONER: Nobody is suggesting  
19 that, but on the other hand if he is going to create a  
20 social upheaval as you have described it here, if he  
21 is going to resort to measures that are more suitable  
22 for the fifth century than for the twentieth, then  
23 he is not entitled to maintain all of the benefits  
24 that society gives him and at the same time repudiate  
25 the responsibilities.

26 MR. FERGUSON: I don't want you to  
27 infer that we are talking about --- this is an  
28 individual instance, this is not a general situation.  
29 What happened in Hanover is not a general situation of  
30 what happens in Ontario, I am glad to say, but it did







1 occur.

2 THE COMMISSIONER: You presented it  
3 as a demonstration of what will happen in a certain  
4 situation.

5 MR. FERGUSON: What might happen,  
6 there is no doubt about that.

7 THE COMMISSIONER: Well, if you have  
8 the same factors it is bound to happen.

9 MR. FERGUSON: That is true. And we  
10 have seen unfortunate situations like in the trucking  
11 industry where there have been unfortunate problems.  
12 There may be particular circumstances relating to any  
13 individual type of industry, but as I say, I don't  
14 believe, we don't believe that any employer, particularly  
15 a small employer, should be faced with having to  
16 bargain at the table, collective bargaining, become  
17 engaged in collective bargaining knowing that as soon  
18 as the union in its discretion calls a strike he must  
19 shut down his operation. Many strikes can be called for  
20 many reasons, many reasons. Why should the employer  
21 be faced with the requirement of shutting down his  
22 plant when it is beyond his control as to why a strike  
23 occurs?

24 THE COMMISSIONER: These strikes do  
25 continue. You mentioned six, seven, eight weeks.

26 MR. FERGUSON: Some of them do.

27 THE COMMISSIONER: There was one at  
28 Ford of 99 days.

29 MR. FERGUSON: Yes.

30 THE COMMISSIONER: Well, the plant was





1 shut down 99 days?

2 MR. FERGUSON: Yes, I understand that.  
3 And the employer then, and the large employer obviously  
4 has to face all the economic circumstances which may  
5 arise at the time of the strike. He throws his hat  
6 in the ring and he knows exactly what he will face, and  
7 he faces it on the basis that because of the  
8 circumstances he won't hire other people, he will just  
9 protect his property. There is no doubt about that and  
10 I see nothing unreasonable about that.

11 THE COMMISSIONER: But on your own  
12 assumption of what should be left untouched anything  
13 over 500 employees will nullify that by the requirement  
14 of stoppage.

15 MR. FERGUSON: Well, I don't place any  
16 margin of 500 employees. I am unable to do that.

17 THE COMMISSIONER: Certainly in some  
18 situations it would be so.

19 MR. FERGUSON: I have known situations  
20 where a man has 50 employees or 100 employees, and when  
21 faced with a strike he has shut down his plant.

22 THE COMMISSIONER: What I mean is if  
23 you have 500 employees, first assuming them to be  
24 skilled, of course, he is not in a position in normal  
25 conditions to replace them and therefore he stops.

26 MR. FERGUSON: That is right.

27 THE COMMISSIONER: If it is semi-  
28 skilled the likelihood is that he might get some, but  
29 not the 500.

30 MR. FERGUSON: Right.





1 THE COMMISSIONER: And if it is  
2 500 ordinary labourers and it depends upon the labour  
3 market and the position of the labouring possibilities.

4 MR. FERGUSON: Yes, that is correct.  
5 But by placing him in the position of not being able to  
6 hire other people too it would have a tendency to  
7 make the employer revamp substantially his working  
8 force. I know what an employer would do, the small  
9 employer; he would hire more supervisory personnel,  
10 he would hire many more people and put them on salary,  
11 he would enlarge his office staff purposely only for  
12 the purpose of withstanding strike action. He would  
13 not hire anybody else; he would run his plant with  
14 those he has inside the plant and I am sure that would  
15 be the natural inclination of the employer.

16 THE COMMISSIONER: But why doesn't  
17 that follow now on your own view of the thing?

18 MR. FERGUSON: Well, some of them do,  
19 but they know that at the time of the strike they know  
20 there is no law that prevents them from hiring other  
21 people.

22 THE COMMISSIONER: But you have even  
23 agreed that 500 cannot be replaced.

24 MR. FERGUSON: I agree with you that  
25 when there are more than 500 then he probably won't  
26 even try to replace them.

27 THE COMMISSIONER: No, well, then  
28 he doesn't reorganize his staff because of that.

29 MR. FERGUSON: Not in that large  
30 number. He will reorganize his staff for the protection







1 of his property, but I am talking about the small  
2 employer.

3 THE COMMISSIONER: Then let us come  
4 down to the small one. Take 150.

5 MR. FERGUSON: Right.

6 THE COMMISSIONER: Because I think  
7 you have plants with even 25.

8 MR. FERGUSON: I would think so.

9 THE COMMISSIONER: The conditions are  
10 different from what you have, they are closed up anyway.  
11 The only thing I am suggesting is that in certain  
12 situations where you have a number, I would say 500,  
13 it might be 400, it might be 350 or 200 in the case of  
14 highly skilled employees, the work is brought to a stop.

15 MR. FERGUSON: There is no doubt about  
16 the fact, sir, that hiring of strikebreakers, if you  
17 wish to call them that, becomes complete theory when  
18 you relate it to certain types of employers, it is  
19 complete theory.

20 THE COMMISSIONER: That is all I am  
21 trying to show.

22 MR. FERGUSON: I agree with you, I  
23 can't disagree about that.

24 THE COMMISSIONER: He must take that  
25 into account too in his negotiations.

26 MR. FERGUSON: Yes, I agree.

27 THE COMMISSIONER: And it will be a  
28 deterrent to him bringing things up to the crisis of a  
29 strike.

30 MR. FERGUSON: And he, I believe, takes





1 that into consideration when they are taking on that type  
2 of employer they are taking on a substantial enterprise  
3 which, through its organization, can withstand substantial  
4 economic pressures and those things have to be analyzed.

5 THE COMMISSIONER: Well, those condi-  
6 tions can be brought about.

7 MR. FERGUSON: Oh, yes.

8 MR. POLLOCK: In addition to the employ-  
9 ment of strikebreakers, or whatever they are called, what  
10 about extending subcontracting, temporary subcontracting,  
11 and things like that? Are those permitted in your concep-  
12 tion?

13 MR. FERGUSON: I have run into situa-  
14 tions where a union has called a strike because the  
15 employer will not meet impossible demands. The employer  
16 was faced with having to carry out substantial contracts.  
17 The employer had no alternative to withstand the economic  
18 pressure. The employer was forced to contract certain  
19 work or lose all his business. I believe he has every  
20 right to do it.

21 MR. POLLOCK: Your practice seems to be  
22 restricted to nice employers!

23 MR. FERGUSON: I am sure some of my  
24 trade union friends are not convinced that we are always  
25 the nicest people in the world to deal with, but we do not  
26 seem to have very much trouble with them, at least the  
27 responsible ones.

28 MR. POLLOCK: As far as the contracting  
29 out of these certain jobs, would you permit the picketing  
30 to extend to the premises as well that are doing struck work?







1 MR. FERGUSON: No, I would not. We  
2 have had cases where subcontracting work was done by  
3 an employer through cooperation with another employer  
4 for the purposes only of placating a union in the  
5 strike. Pickets were thrown up at the plant of the  
6 subcontractor and the employer wanted to obtain an  
7 injunction on this matter, and it was our view, and  
8 still is, that that employer would not be entering  
9 the court with clean hands. We do not think that that  
10 employer should obtain an injunction against picketing.

11 MR. POLLOCK: Do you think there is an  
12 economic balance, apart from the inherent disbalance  
13 between a rich employer and a weak union, is there  
14 an economic balance between the picketing as you  
15 conceive it to be, three or four pickets informationally  
16 picketing a plant, the company having available to  
17 them or access to, employing alternate employees,  
18 subcontracting temporarily; virtually any technique  
19 that is available to anybody is available to the employer  
20 and yet the picketing union or picketing employees  
21 are restricted to (a) numbers and (b) location and (c)  
22 to the form of conduct on the picket line? Is that a  
23 balance?

24 MR. FERGUSON: I think there is  
25 extreme imbalance when the United Steelworkers of  
26 America as an international are waging a strike  
27 against Mr. X.Y.Z., an employer with 50 employees  
28 and a large bank loan; there is a complete imbalance.  
29 Every one of those trade union members will not cross  
30 a picket line and he knows it and they know it.





1 There is a complete imbalance. They can put him out of  
2 business and cripple him in bankruptcy in three months,  
3 and they know it. There is no balance whatsoever.

4 THE COMMISSIONER: How would you  
5 create a balance? Suppose you prevent the steel  
6 union from picketing?

7 MR. FERGUSON: I don't suggest any  
8 form of balance will ever be perfect.

9 THE COMMISSIONER: But would it be  
10 substantial, if he is permitted to go into the free  
11 market and bring in whomever he can?

12 MR. FERGUSON: I think one of the  
13 risks of business which every employer must assume is  
14 the economic pressure of a strike, and if he is a  
15 responsible employer with a certain number of employees  
16 he will inevitably have to face up to union organization.  
17 This is also, if he wants to call it, a business risk.  
18 I think through the process of collective bargaining  
19 where they both know those and they both calculate the  
20 risks, that no regulation or laws can change the  
21 balances other than remove violence and unlawful  
22 behavior.

23 THE COMMISSIONER: We are assuming,  
24 though, that they have failed to come to an agreement  
25 and that there is a strike and that there is a picket  
26 line, and none of the employees will cross that picket  
27 line, and you say he will be in bankruptcy in three  
28 months.

29 MR. FERGUSON: He may be.

30 THE COMMISSIONER: Is there anything





1 that can be done to ward that off on his part, even if  
2 it involves deterrents on his opponents' part?

3 MR. FERGUSON: The trouble is  
4 with all these things that I find is that if you apply  
5 the restriction to the small employer, then one tries  
6 to transpose it to the situation where there is a large  
7 employer. I think that is a state of circumstances,  
8 with a lawful strike and lawful picketing, he  
9 unfortunately is in a position where his business is  
10 placed in jeopardy, and this is an economic risk he  
11 must assume in our capitalistic system.

12 THE COMMISSIONER: Then he must  
13 accept the bankruptcy proceeding in three months.

14 MR. FERGUSON: That is correct.

15 THE COMMISSIONER: There is a public  
16 interest in maintaining that, isn't there?

17 MR. FERGUSON: Yes, sir, there is a  
18 public interest in maintaining his business, but on the  
19 other hand he must assume those risks when he goes  
20 into business.

21 THE COMMISSIONER: Well, that is  
22 logical, quite logical. It is on the basis of  
23 maintenance of a war, but a war generally disregards  
24 all questions of public interest. If that work failed  
25 in what may be a medium-sized community it might work  
26 serious injury to the very life of that community:  
27 People would have to move out; there would be nothing  
28 to attract them there.

29 MR. FERGUSON: While we did not touch  
30 on one other question of essential services, there may







1 be situations where the livelihoods of all those in a  
2 community are going to be seriously prejudiced. Let  
3 us take a town ---- there are many of them ---- where  
4 there is one prime, stable industry, and if there is a  
5 closing of that industry within that town it can  
6 seriously cripple the whole community. Perhaps that  
7 could be deemed as an essential service for the purposes  
8 of industrial relations. I don't know how one would  
9 define it.

10 THE COMMISSIONER: Well, it is purely  
11 localized, and it is not in the character of essential  
12 services that are generally in mind, at least.

13 MR. FERGUSON: It may affect more  
14 lives in that community than many other services.

15 THE COMMISSIONER: Applying that to  
16 your previous assumption, these men are organized with  
17 the steel people --- a powerful union, and we assume a  
18 reasonable union, but somewhere or other they come to  
19 the striking period and they are struck. I would say in  
20 the interests of the community you ought to try at  
21 least to see whether there is not some means by which  
22 their power can be counteracted in the interest of  
23 maintenance of that industry.

24 MR. FERGUSON: Sir, this is one of the  
25 particular situations. You mentioned the United  
26 Steelworkers of America. I believe from my own personal  
27 experience that the United Steelworkers of America  
28 would act in a responsible manner and there would not be  
29 such a dispute.

30 THE COMMISSIONER: Oh, yes, but I don't





1 pick them out.

2 MR. FERGUSON: But this is part of our  
3 problems.

4 THE COMMISSIONER: If they do, then  
5 they won't get into the strike position by their  
6 insistence, and therefore it violates our assumption.  
7 We say that they cannot agree; they are in strike.  
8 One must be unreasonable, apparently. All I am  
9 suggesting is that it would seem to be strange that  
10 human beings cannot devise means in which they will  
11 create some rough balance on both sides.

12 MR. FERGUSON: Self-regulation is  
13 something we rarely see.

14 THE COMMISSIONER: We have gone  
15 beyond that because they say they are going to resort  
16 to the final test and "How long can you endure?". In  
17 that endurance the question of succor arises --- whether  
18 we take it from one and give it to the other. Is that  
19 possible?

20 MR. FERGUSON: I would think under  
21 those circumstances this process of free collective  
22 bargaining then breaks down.

23 THE COMMISSIONER: Oh, yes, because  
24 we don't want to be imprisoned by these concepts of  
25 certain actions which we have made into a sort of  
26 pattern. I must say I have very little patience with  
27 the repetition that this violates a right. Of course,  
28 it violates a **right** in the sense that it trespasses on  
29 a right, but that is how society is governed today.  
30 Every regulation of society is a trespass upon what







1 otherwise would be a liberty of action.

2 MR. FERGUSON: I think you and I  
3 undoubtedly would agree, sir, that there cannot be self-  
4 regulation in matters affecting the community, that  
5 there must be more government control.

6 THE COMMISSIONER: I don't see any  
7 answer to that, and the object of democracy is to the  
8 cultivation of self-government, self-restraint, self-  
9 subjection.

10 MR. FERGUSON: Some of the matters  
11 we have dealt with as privileged rights of property  
12 certainly are restraints now more than we ever  
13 anticipated they would have been.

14 THE COMMISSIONER: In a sense, and  
15 ultimately the whole compunction of the men to bargain  
16 is an invasion of property rights. I have no doubt that  
17 it shocked people to hear of compelling a man who owns  
18 a property, a citadel to which men must resort in order  
19 to earn something, as we say, to find that he is  
20 compelled to bargain in good faith. Don't you consider  
21 that that is a trespass upon property, because it is  
22 related to his property, it is on him personally, and  
23 if he is dishonest he can be in a sense punished by  
24 some measure that you properly suggested.

25 MR. FERGUSON: I believe that that  
26 is the backbone of our process, of the duty and  
27 responsibility of the parties to bargain in good faith.  
28 It has not been defined sufficiently. I don't think  
29 enough attention has been paid to it and I think there  
30 must be some teeth put into the law or laws where one





1 party has not bargained in good faith.

2 MR. POLLOCK: But bargaining in good  
3 faith really only gets you to a stage of honest  
4 disagreement; that is all. It only gets you up to that  
5 stage where you and I may be bargaining about some  
6 matter and both of us are putting all our cards on the  
7 table and I think that my job is worth so much money  
8 and you do not think it is worth that much money,  
9 and you are saying to me, "I believe this, this and  
10 this", and I am saying to you, "I believe the other".

11 MR. FERGUSON: Mr. Pollock, the  
12 differences between the parties are substantially  
13 narrowed through the process of your bargaining in  
14 good faith and my bargaining in good faith.

15 MR. POLLOCK: That is right, and we  
16 reach a position where both of us think we are being  
17 reasonable; by our own subjective standards we are being  
18 super-reasonable. I have conceded many things to you  
19 to get you to concede many things to me. At this stage  
20 we are still apart.

21 MR. FERGUSON: Then we still have a  
22 strike.

23 MR. POLLOCK: That is right, then we  
24 still have a strike. We have had good faith bargaining.

25 MR. FERGUSON: We insist on good  
26 faith bargaining after the strike, not intimidation  
27 and coercion.

28 MR. POLLOCK: All right, we are at  
29 the stage and we are still apart and there is a  
30 substantial difference between you and I, but we are





1 both trying to accommodate or bridge this gap. All  
2 right, now the question--- and I think this whole  
3 argument is precipitated or pointed up by page 16 of  
4 the brief where it talks about leading up to the stage  
5 I have said:

6 "At this stage an  
7 economic struggle exists  
8 between the parties."

9 Now, why drag into this what turned out to be a dispute  
10 between the employer and the employees, outside employees,  
11 strikebreakers? Why bring in the subcontracting out to  
12 other firms? Why bring in all these other aspects and  
13 then say to the employee, "I am going to be able to do  
14 all this, but all you can do is put three men at the  
15 door to communicate information"? Why not be  
16 consistent in this and say, "If you can do all of  
17 these things and you can go and picket peacefully in  
18 front of my subcontractor and tell the people there  
19 who have now been brought into what started out to be  
20 a family dispute, 'You are working on material for a  
21 struck plant' " ---

22 MR. FERGUSON: Mr. Pollock, your  
23 question leads me to assume that you think there are  
24 only two parties. There aren't two parties in collective  
25 bargaining; there are the employees, there is the union  
26 and the employer.

27 MR. POLLOCK: And the shareholders,  
28 that is four parties.

29 MR. FERGUSON: As far as the active  
30 parties are concerned in negotiations there are the







1 employees, there is the union and there is the employer.  
2 Many employers have the view that they probably would  
3 be able to settle a lot of collective agreements if it  
4 was not for so-called union policy. It is not a  
5 question of forgetting the others because you  
6 automatically have included the union and the union is  
7 an interested party. The union calls the strike, the  
8 union calls the shot --- not the employees basically.

9 THE COMMISSIONER: Now, how can you  
10 say that when you are objecting to the fact that the  
11 employees are asked to ratify the terms that the union  
12 agrees to?

13 MR. FERGUSON: I say the employees  
14 are asked to ratify on a strike vote.

15 MR. POLLOCK: No, not on a strike vote,  
16 on a settlement vote.

17 MR. FERGUSON: I have suggested  
18 that the process of collective bargaining might be  
19 more successful if they didn't have to.

20 THE COMMISSIONER: Yes, but we are  
21 talking now about the interest for which the union is  
22 fighting. It is primarily --- it may have, I agree,  
23 an indirect influence, but primarily it is taking up  
24 the quarrel of the men and therefore your separation  
25 into three parties must be qualified to that extent.

26 MR. FERGUSON: Yes, I suppose it must  
27 be separated to that extent. But there is another  
28 party. Unions, for instance, through the different  
29 affiliations of their different locals will have general  
30 policies as to what they will accept as settlements.





1 THE COMMISSIONER: That may be, but  
2 take the case first where there is no such matter  
3 involved, they are not bringing about a strike at A  
4 in order to strengthen their position at B, C and D.  
5 Suppose this confines itself to A ---

6 MR. FERGUSON: A completely isolated  
7 situation.

8 THE COMMISSIONER: Yes. I think I  
9 would have to credit them with being concerned almost  
10 entirely with the interests of the people at A.

11 MR. FERGUSON: Many of the responsible  
12 unionists I would agree with you that they are in  
13 an isolated instance. Unfortunately, there are too  
14 many of the other instances which perhaps cloud our  
15 issues and there a settlement won't be made unless  
16 certain concessions are granted in B, C and D. We find  
17 that in the industry where there are affiliations of  
18 locals where union policy is dictated and in fact there  
19 will not be a settlement in one unless there is a  
20 settlement in another. It does not matter what the  
21 employees in fact wish; it is a question of union  
22 policy in the different affiliations of locals. This  
23 is the way they conduct their affairs and sometimes it  
24 may be constructive.

25 THE COMMISSIONER: Even there what  
26 they spread over into are the interests of other  
27 workers.

28 MR. FERGUSON: Yes, they do, but they  
29 are spreading union policy too, but this is their  
30 business. I am not critical of them always doing this







1 if it is outside genuine policy.

2 THE COMMISSIONER: I see what you have  
3 in mind, that is the important thing for me.

4 MR. FERGUSON: I am not always  
5 critical of them doing that. They may form industrial  
6 patterns to be established.

7 MR. POLLOCK: The only legitimate  
8 reason for picketing in your view is the dissemination  
9 of information?

10 MR. FERGUSON: Yes.

11 MR. POLLOCK: To whom?

12 MR. FERGUSON: To the public and to  
13 other employees concerned who may or may not work in  
14 the plant, and to other employees or persons who may  
15 or may not elect to take employment. It is also to  
16 communicate information to those who will be dealing  
17 with the employer through the supply of services, to  
18 deal with outside employers who may be dealing as  
19 suppliers of materials and things of that nature. It  
20 is to communicate information to them. Unfortunately,  
21 it has gone far beyond the original reasons.

22 MR. POLLOCK: Let us assume it is  
23 the communication aspect: Before you answer this  
24 question in the negative, you would not prohibit  
25 peaceful picketing, communication picketing two or  
26 three pickets with a few signs marching up and down in  
27 front of an outlet of the struck plant or one of its  
28 suppliers, would you?

29 MR. FERGUSON: Mr. Pollock, I don't  
30 think that is the same question as we dealt with before.





1 You talked before about a subcontractor. Now, this is  
2 a different set of circumstances. If an employer was  
3 faced with a lawful strike action, if he had tried to  
4 withstand the strike action by subcontracting everything  
5 to another employer, I believe your question was would  
6 I object to peaceful picketing outside the premises of  
7 the subcontractor.

8 MR. POLLOCK: Yes.

9 MR. FERGUSON: I said no I wouldn't.

10 MR. POLLOCK: You said you would.

11 MR. FERGUSON: Pardon me, yes, the  
12 subcontractor I would if it was a lawful strike.

13 MR. POLLOCK: If there was a lawful  
14 strike at plant A and to get my contracts filled I,  
15 the owner of plant A, would get plant B to manufacture  
16 some of my things, you won't let pickets in front of  
17 that plant.

18 MR. FERGUSON: No.

19 MR. PAULIN: Why wouldn't you, sir?  
20 I was wondering how this might be justified. This  
21 certainly is going to cause damage to the subcontractor  
22 at plant B who has no dispute with his own employees  
23 whatever.

24 MR. POLLOCK: Well, he is certainly  
25 taking some side in this dispute.

26 MR. PAULIN: How is he? He is doing  
27 business with one his customers or with somebody who  
28 has become his customer. One point I would like to make  
29 if I may that we were talking about earlier: Earlier  
30 Mr. Ferguson was mentioning the fact that an employer





1 in effect takes a calculated business risk when he  
2 decides that he cannot or will not meet the demands  
3 of the union. He will take a calculated risk that first  
4 there will be a strike and, secondly, he takes a  
5 calculated business risk that the strike will not be  
6 successful. But surely the trade union similarly takes  
7 a calculated business risk that the strike will be  
8 successful and what I understand or the impression I  
9 get from reading a great deal of material that has been  
10 published over the period of the last year or eighteen  
11 months is that what --- well, for example, the Ontario  
12 Federation of Labour in its brief which I have seen  
13 and which I have read about, they seem to want to have  
14 the success of every strike guaranteed to this extent  
15 --- now, to this extent, that the employer ought to be  
16 compelled to cease operations during the time that his  
17 employees are engaged in a lawful strike and if you  
18 have that happen, then you have the success of the  
19 strike virtually guaranteed before it even takes place.

20 If we can take this one step further,  
21 if the employer has been unreasonable or unfair in  
22 dealing with some demand and it is really the employer's  
23 fault, then that is one thing. On the other hand, if  
24 the demand that has been made upon him, say, by the  
25 trade union at the bargaining table is quite  
26 unreasonable and quite unfair and would be economic  
27 folly for the employer to agree with, that again is  
28 another situation. But who is going to check the  
29 merits of the nature of the dispute between the parties?

30 MR. POLLOCK: In your case you said







1 the employer judges the merits and the union says the  
2 employees judge the merits.

3 MR. PAULIN: No, I am saying to you  
4 that the employer takes a calculated business risk and  
5 I don't think you can say anything else except that  
6 the union ought to take a calculated business risk as  
7 well that the strike will succeed.

8 MR. POLLOCK: That is true. They  
9 would take the calculated business risk by looking at  
10 the employer. I look at my employer and I see that he  
11 has got so much investment and so much plant and all  
12 these other things, I can look at that today and see what  
13 basis I can make his risk of success and my risk of  
14 failure on. I look at the strength of my union and my  
15 funds and the desire of my members to go on strike.  
16 But the point is that at this stage where you are  
17 taking this calculated risk or assessing the risk you  
18 can't assess how many subcontractors and how many  
19 outside employees and how many of these other factors  
20 are going to be brought in.

21 MR. PAULIN: That is quite true, that  
22 is exactly true.

23 MR. POLLOCK: And passing down the  
24 line of calculated risk ---

25 MR. PAULIN: That is part of the  
26 risk.

27 MR. POLLOCK: Is it part of the risk  
28 of the subcontractor?

29 MR. PAULIN: Why?

30 MR. POLLOCK: Wait a minute, you





1 haven't heard my question. Part of the risk of the  
2 subcontractor is that if he does work for a struck plant  
3 then he will have some of those strikers walking up and  
4 down in front of his plant with signs saying, "This man  
5 is manufacturing goods for a plant that is on strike  
6 and refuses to come a reasonable agreement"?

7 MR. PAULIN: You draw a distinction  
8 in the case where the subcontractor had been doing  
9 work for the employer before the strike began, do you?

10 MR. POLLOCK: Had been doing that type  
11 of work?

12 MR. PAULIN: Yes.

13 MR. POLLOCK: I think if he had  
14 always been the subcontractor of the employer and he  
15 had not received any work from the unit of manufacture  
16 that is on strike it doesn't really cause much problem.

17 MR. PAULIN: How do you mean?

18 MR. POLLOCK: Well, to me if this man  
19 is part of the manufacturing process in the sense that  
20 he is making a certain gear ---

21 MR. FERGUSON: He has always been a  
22 subcontractor.

23 MR. POLLOCK: That is right, he has  
24 always been a subcontractor.

25 MR. PAULIN: He makes a component  
26 part.

27 MR. POLLOCK: He has made a component  
28 part. The union's dispute in the initial circumstances  
29 with the assembly of all these component parts, we are  
30 a union of assemblers --- let us take a hypothetical







1 case of plant A as an assembler of some electronic  
2 components and B, C and D are the manufacturers of these  
3 components, I am an employee in the unit assembling  
4 these things, I go on strike and withdraw my labour.  
5 My complaint is that I don't want my employer to obtain  
6 any other assembling services, not the manufacturing ---  
7 I would like him to continue to have to buy all those  
8 components from all those other fellows because he is  
9 having the expense of buying these parts when I know  
10 he can't put them together without my services and they  
11 have been withdrawn.

12 MR. PAULIN: What we are talking  
13 about really is there is picketing.

14 MR. POLLOCK: In some cases, yes.

15 MR. PAULIN: It is purely secondary  
16 picketing. Let us take a case where you have a company  
17 that manufactures television sets and radios which does  
18 not manufacture the cabinets and buys those cabinets  
19 from some other company that manufactures them and the  
20 company that manufactures the television sets has a  
21 lawful strike of its employees occur, do you then  
22 suggest that, as I understand you, the striking employees  
23 are then able to go over to the independent manufacturer  
24 of the cabinets and picket his plant?

25 MR. POLLOCK: No, I am not  
26 suggesting that.

27 MR. PAULIN: I don't understand your  
28 distinction then. Secondary picketing is a form of  
29 secondary boycotting and our Court of Appeal has said  
30 that it is unlawful per se and I understand that the





1 Supreme Court of Canada has refused leave to appeal or  
2 leave to appeal from that decision was refused. This  
3 is the law that we are faced with today.

4 MR. POLLOCK: Let me look at the  
5 facts of Hersee of Woodstock without going into the  
6 details of the judgment. Let us take the fact  
7 situation as if we were deciding the case.

8 MR. PAULIN: I could tell you what my  
9 decision would be, because I am familiar with the facts  
10 of the case and I have read it a number of times and I  
11 don't think that I could approach it in any other way  
12 than to find that it was a form of secondary boycotting.  
13 In this case it took the form of picketing.

RY/SS 14 MR. POLLOCK: But what you call,  
15 whether it is secondary boycotting or whether it is  
16 secondary-picketing or whatever it is called, that does  
17 not make it unlawful per se. The courts have to  
18 determine whether it is unlawful. At this stage we  
19 are trying to determine what type of activity ought to  
20 be permitted.

21 MR. PAULIN: If any.

22 MR. POLLOCK: Yes, that is right.  
23 The only embellishment I make on the facts in Hersee's  
24 is the strike at the initial plant, and I don't think  
25 there was one. So, we have a manufacturer on strike  
26 and assuming it was lawful, which it was, the outlet,  
27 the retail outlet of this manufacturer is Hersee's of  
28 Woodstock. He sells other things, but he sells this,  
29 and the picketers say, "Attention, shoppers, don't  
30 buy X brand from Hersee's. Buy Y and Z and all the





1 other brands. X brand is made by a plant that is on  
2 strike and using other than union labour." Now, what  
3 is wrong with that? You are encouraging them to shop  
4 at Mr. Hersee's, but they say, "Don't aid this  
5 manufacturer".

6 MR. PAULIN: What is wrong with it  
7 in my submission, Mr. Pollock, is this, that you have  
8 a situation now where you have a picket in front of  
9 the establishment of a person who has no dispute with  
10 his own employees; he has no dispute whatever. His  
11 labour relations are excellent.

12 MR. POLLOCK: That is right.

13 MR. PAULIN: And the court in Ontario  
14 has taken judicial notice of the fact that a picket  
15 line is a very substantial barrier, even if it is one  
16 person walking up and down with a placard. People tend  
17 not to go in; people tend not to cross the picket line  
18 and go into the premises that are being picketed.

19 MR. POLLOCK: If that was the fact,  
20 Mr. Paulin, I suggest there is no argument for mass  
21 picketing, then, and all you would need is one picket.

22 MR. PAULIN: That is to prevent people  
23 from coming in who don't want to come in, but if you  
24 have someone who wants to go in, he is going if there  
25 is one picket, but he is not going to go in if there  
26 are 100 or 150. But, getting down to this one picket,  
27 this establishment which is being picketed is suffering  
28 damage as a result of that picketing, and all he is  
29 doing is carrying on a perfectly bona fide business  
30 arrangement with a manufacturer of goods where employees







1 are on strike.

2 MR. POLLOCK: And that is one of the  
3 legitimate risks he takes, that his suppliers might be  
4 on strike and he might be forced to take sides in this  
5 dispute.

6 MR. PAULIN: He may not even know what  
7 trade union represents the employees of his agent. How  
8 could he take sides?

9 MR. POLLOCK: Well, you could apply  
10 the word "succor" to that.

11 THE COMMISSIONER: I was wondering  
12 about the effects on the public. I can understand it  
13 having an effect on the people going into the plant to  
14 work or to return to work, but what kind of plant have  
15 you in mind when you think that the presence of a line  
16 there is going to keep the public out?

17 MR. PAULIN: If I may take the case  
18 of a construction project: One person with a placard  
19 will keep people out.

20 THE COMMISSIONER: That is not the  
21 public that is being kept out, it is the other employees.

22 MR. PAULIN: Well, the public have no  
23 interest in going to the construction project.

24 THE COMMISSIONER: You were saying  
25 the public would not go in. Now, what kind of activity  
26 do you have in mind?

27 MR. PAULIN: The Royal York Hotel  
28 case, for example.

29 THE COMMISSIONER: Did it have any  
30 real effect? I know there was one Member of Parliament





1 who rather boasted about it. Do you think that had much  
2 effect on the public?

3 MR. PAULIN: I think it had an  
4 enormous effect on the public.

5 THE COMMISSIONER: Has there been any  
6 information given out by the C.P.R.?

7 MR. PAULIN: I don't know if the  
8 information given out -----

9 MR. FERGUSON: The picket line in the  
10 Nipissing Hotel case, the business in the hotel was  
11 reduced by 50%.

12 THE COMMISSIONER: But why ----- because  
13 they had to look after themselves if they went in  
14 there. They had to look after their own rooms.

15 MR. FERGUSON: No, sir, with respect.

16 THE COMMISSIONER: They had no help  
17 from bellboys.

18 MR. PAULIN: We are talking about two  
19 different things, perhaps. We have the Royal York  
20 Hotel case which we will leave over here, and then we  
21 have a reported case, the Nipissing Hotel case.

22 THE COMMISSIONER: I was dealing with  
23 the Royal York.

24 MR. PAULIN: In the Nipissing Hotel  
25 case there was no strike. There was picketing, but there  
26 was no strike, and that was one of the very few picketing  
27 cases that went to trial and damages were awarded.  
28 Damages had been agreed upon. Damages had not been  
29 proved in evidence, but agreed upon in an agreed  
30 statement of facts filed by counsel for the parties.







1 MR. FERGUSON: The hotel lost 50% of  
2 its business.

3 MR. POLLOCK: Of its liquor business.

4 MR. FERGUSON: Well, that was the  
5 business.

6 THE COMMISSIONER: Was it more or less  
7 agreed that it was due to the fact that a picket line  
8 had been drawn up?

9 MR. PAULIN: It was set out in the  
10 reasons for judgment in that case.

11 THE COMMISSIONER: What is the  
12 situation in the Royal York case? I read a newspaper  
13 report and that is all I have to go on.

14 MR. FERGUSON: I am only aware of the  
15 fact through my association with the C.P.R. and the  
16 Royal York, that there was a substantial loss of  
17 business.

18 MR. POLLOCK: There was a substantial  
19 loss of service too.

20 THE COMMISSIONER: They also told  
21 people coming in they had to look after themselves.

22 MR. FERGUSON: But on the immediate  
23 basis they lost a substantial number of conventions.

24 THE COMMISSIONER: Oh, that might be,  
25 yes, but that was not necessarily due to the line. It  
26 was due to the absence of workers.

27 MR. FERGUSON: With respect, sir, I  
28 think the trade union organizations wrote to every ---  
29 I am instructed --- they wrote to every convention  
30 headquarters and to every other union which may or may





1 not have been involved, and any conventions at the  
2 hotel, and told them the hotel was on strike and that  
3 the hotel was blacklisted.

4 MR. POLLOCK: What could be a better  
5 form of peaceful communication than that?

6 MR. FERGUSON: I would not say I would  
7 not have done it if I was in the position of the trade  
8 union, but I am only trying to explain that here  
9 was a situation where the existence of a dispute and  
10 the existence of pickets caused a substantial loss of  
11 business.

12 MR. POLLOCK: But the people were not  
13 afraid or did not fear to cross the line.

14 MR. FERGUSON: It was not mass  
15 picketing.

16 MR. POLLOCK: No, not in either of  
17 those cases.

18 MR. FERGUSON: They would have been  
19 afraid had it been mass picketing.

20 MR. POLLOCK: But it was a question  
21 of them being persuaded of the fact --- they identified  
22 more with the employees in these circumstances than  
23 with the employer, which is the legitimate function of  
24 peaceful picketing.

25 MR. FERGUSON: That is correct.  
26 For a while the hotel ---- the public quite commonly  
27 remarked that service was never so good as it was at  
28 the Royal York Hotel, but the fact of the matter is  
29 that the picket line, even though it was a peaceful  
30 picket line, was very successful in keeping large parts





1 of the public out of the hotel.

2 THE COMMISSIONER: I am not persuaded  
3 that it was not in large part due to the fact that they  
4 did not have the services available, but that is a  
5 matter that will have to be settled somewhere else.

6 MR. FERGUSON: That was in the  
7 immediate stages of the strike, sir. But as the strike  
8 went on service was restored back to normal, and at that  
9 time --- I think you are correct about the initial  
10 stages with people carrying their own bags and things  
11 like that, but that was all eliminated after about a  
12 month.

13 THE COMMISSIONER: That may be, but  
14 that is all I say, that it was so reported, and I have  
15 no doubt that men who belong to unions would respect  
16 that line. I am not so sure that the majority of  
17 travellers are men who would. I have seen it in  
18 Ottawa where the Ottawa Citizen had a picket line for  
19 several years. Nobody in the public paid any attention  
20 to it.

21 MR. FERGUSON: It had no public  
22 support, but in the Royal York situation it is the  
23 lifeline of the convention business and banquet  
24 functions and that was very seriously affected. People  
25 would not attend the functions.

26 MR. POLLOCK: On page 22, the paragraph  
27 numbered C --- and this is my final question on this:

28 "When strikes and other disruptions  
29 occur, we seek to limit their  
30 scope and confine the dispute







1 to the smallest possible number  
2 of people. . ."

3 In those circumstances do you confine the dispute only  
4 so far as the union is concerned and the employees,  
5 or would you be content to confine it so far as the  
6 employer is concerned with relation to his sources of  
7 resort during the time of strike?

8 MR. PAULIN: I thought I had spoken  
9 to you briefly on one aspect of this matter and Mr.  
10 Ferguson has been carrying the balance of this part of  
11 the discussion and perhaps Mr. Ferguson would continue  
12 with it.

13 MR. FERGUSON: I think it is the  
14 statement or desire of the Chamber that it is beneficial  
15 to society if the issues in dispute be confined to a  
16 single employer and a single union or a single group  
17 of employees. We would hope that collective bargaining  
18 whenever it breaks down will bring about disruption to  
19 the least number of people's lives. I think that  
20 really is the basic concept of the statement. There  
21 may be situations --- Mr. Pollock, you dealt with this  
22 business of contracting out, and we have had cases  
23 where an employer became involved in producing goods or  
24 services for another employer who was involved in a  
25 strike, and in fact it was the first time which this  
26 particular employer had become involved. We took the  
27 attitude this employer was just too damned greedy,  
28 if I may use those words, and pickets were thrown up.  
29 We took the position that that employer should cease  
30 that type of activity. The union respected our views





1 and withdrew the picket line and the matter of the  
2 dispute was not spread to those other people. Aside  
3 from the law, aside from the technicalities, we did  
4 not think it was good labour relations for people to  
5 become involved in that type of thing.

6 Technically, one could say they should  
7 be able to, but it was not continuation of a service to  
8 be rendered ---

9 MR. POLLOCK: No, that is what I mean.

10 MR. FERGUSON: I think you can  
11 distinguish between those two instances. I think it is  
12 the desire of everyone that the least number of lives  
13 disrupted by the failure of collective bargaining to  
14 succeed, the better. That is all we seek. We believe  
15 that to be a justified statement of policy.

16 THE COMMISSIONER: I think we will have  
17 to agree when one considers everything that has been spoken  
18 in this room since we started the hearing, we must agree  
19 that there are many sides to truth and, as somebody once  
20 said, the infinite number of points of view. So, we  
21 are all seeking that central idea of truth which has  
22 so many colours and so many different forms.

23 MR. FERGUSON: From the beginning  
24 we realize the existence of this Commission stemmed from  
25 the very active, we felt, militant activities on the  
26 part of the unions to eliminate injunctions. Now, this  
27 was foreign to us because we have never had too much  
28 difficulty with what we believe to be the responsible  
29 people in the trade union movement or their counsel.  
30 This had not been a matter of difficulty.







FN/SS 1

MR. POLLOCK: In an average case how long would it take you to prepare the material for filing an injunction?

MR. FERGUSON: If we were as efficient as we would like to be, Mr. Pollock, if someone phones our office at eight o'clock in the morning this usually arises in a construction case on the job site and if the people are available and they are in town or can come into town we should have the documentary evidence completed by three or four in the afternoon.

MR. POLLOCK: Do you at eight o'clock in the morning advise the union that you are seeking an ex parte injunction?

MR. FERGUSON: No, we do not. If it is a situation where we are seeking an ex parte injunction I don't believe we would advise them.

MR. POLLOCK: Why?

MR. FERGUSON: We may not even know who are the defendants at that time.

MR. POLLOCK: If you are starting to prepare the material you have to have defendants.

MR. FERGUSON: No, in the meantime the people are helping us to get identification and are coming down for the purposes of swearing the affidavits.

MR. PAULIN: We are saying that if we knew who counsel was on the other side, if we knew who counsel for that union customarily was we would advise them.

MR. POLLOCK: Assuming you knew who the union was which you would have to know, and if you





1 knew who the union was in the early stages would you  
2 send them a telegram or advise them?

3 MR. PAULIN: We would, depending on  
4 the circumstances and in some cases it would be a  
5 sheer and idle waste of time to do that and in other  
6 cases we have had a telephone call at eight o'clock in  
7 the morning and we have been able to call a union  
8 officer of the union involved or the firm of lawyers  
9 who regularly act for them and it has been entirely  
10 unnecessary to have taken any proceedings whatever  
11 because they don't always know what is going on at a  
12 certain location or when we have told them what is  
13 going on they make their own investigation and they  
14 themselves have it stopped so ~~that~~ it is not necessary  
15 to take the proceedings.

16 MR. POLLOCK: But there would not be  
17 any objection to you notifying them at that time?

18 MR. PAULIN: No, no objection whatever.

19 MR. POLLOCK: Or even if there was a  
20 central registry as it is suggested in the brief in  
21 much the same manner as there is a Toronto agency.

22 MR. FERGUSON: There are some lawyers  
23 who are involved in the matter and would investigate  
24 the matter. We have no objection to phoning them up.  
25 We would phone them up because we solve many matters  
26 that way. We solve many matters by sending a wire to  
27 some trade union representative whom we know or we  
28 phone him. These things depend upon the circumstances.  
29 Statistics, while I know they are helpful, don't  
30





1 disclose the many instances --- and there have been  
2 dozens and dozens of them --- where there has been no  
3 injunction sought and where the matter has been solved  
4 through mutual respect and cooperation of the parties  
5 in one or two hours and very aggravating circumstances  
6 have occurred.

7 MR. POLLOCK: You just had to  
8 subtract the number of strikes from the number of  
9 injunctions to arrive at those where no injunction was  
10 sought.

11 MR. FERGUSON: Yes, but you don't  
12 arrive at one of the situations where there could have  
13 been an injunction sought, but it was avoided because  
14 of the cooperation of the parties. So we have no  
15 objection, we never have any objection to phoning someone  
16 who is in the situation because they are not anxious to  
17 get involved in legal proceedings nor are we anxious  
18 to drag our clients into courts.

19 MR. POLLOCK: I forget the answer to  
20 the question this morning, but with relation to the  
21 calling of witnesses viva voce is there any objection  
22 to that type of situation if, in fact, it does speed up  
23 the proceedings?

24 MR. FERGUSON: If they were available,  
25 if the other party required the right to cross-examine  
26 and if it did try to hold up the matter through large  
27 delays ---

28 MR. POLLOCK: Let us take the  
29 situation they would have to be available in your office  
30 to swear the affidavits.







1 MR. PAULIN: Not necessarily. This  
2 is the point I didn't make clear this morning. We  
3 very much dislike affidavits setting forth information  
4 and belief and we will retain agents in smaller  
5 outlying communities to take the affidavits of one of  
6 the parties who has personal knowledge of some fact  
7 which we must establish.

8 MR. POLLOCK: And send it to you?

9 MR. PAULIN: And send it to us.  
10 If there is cross-examination demanded, then he is  
11 available for cross-examination either at that place  
12 or if the people want to bring him here they can bring  
13 him here.

14 MR. POLLOCK: They can send you the  
15 body in as much time as it takes them to go out and  
16 get the statement, draft the affidavit and bring it  
17 back. As far as time is concerned that is not the  
18 essential factor.

19 MR. PAULIN: That is not essential, no.

20 MR. POLLOCK: The last question  
21 relates to the suitability of unions in which there are  
22 some suggestions that they ought to be liable for  
23 damages, either that they be incorporated or the Rights  
24 of Labour Act be repealed. Would you feel that that is  
25 a reasonable alternative to the injunction remedy in the  
26 sense that if they were in fact liable for damages, and  
27 let us assume the best case for these purposes, the  
28 Steelworkers' Union which has a large unencumbered fund  
29 apart from the situation in Quebec, has a large amount of  
30 funds that could satisfy \$200,000 or \$300,000 damages





1 easily or \$500,000 if it was required, would that be  
2 an alternative to the physical monetary damages that  
3 would normally occur by loss of business through  
4 illegal or unlawful activity?

5 MR. FERGUSON: Oh, no, we don't  
6 believe it would be by any means. The injunction is  
7 a process to remove violence or to restore the employer  
8 to a position where he is no longer suffering from  
9 irreparable damage.

10 MR. POLLOCK: What does "irreparable  
11 damage" mean?

12 MR. FERGUSON: Mr. Paulin, you had  
13 better deal with this question.

14 MR. PAULIN: I think perhaps if I  
15 may deal with your first question first, the change  
16 that we propose in the Rights of Labour Act is merely  
17 procedural. This does not involve, I suggest, any  
18 substantive change in the law. The Rights of Labour  
19 Act simply says, "The trade union shall not be made a  
20 party to an action".

21 MR. POLLOCK: I agree with that.

22 MR. PAULIN: And as you, of course,  
23 very well know, sir, Ontario and Saskatchewan are the  
24 only two jurisdictions in Canada I am aware of that  
25 have this prohibition against making a trade union a  
26 party to an action. There may be others, but I know  
27 only of those two. I don't see any reason why they  
28 ought not to be. We point out at page 9 of our brief  
29 that what seems to be public policy in this matter has  
30 been demonstrated by the decision of the Supreme Court







1 of Canada in 1960 in the Therien case.

2 MR. POLLOCK: I am not dealing with  
3 that question of making them a suitable entity. I am  
4 asking --- let us put it this way: There has been  
5 at least an argument available to the employer who  
6 says, "I need this injunction to stop these acts because  
7 even though I couldn't because they only cost me money  
8 I cannot sue the union, I can never recover these  
9 amounts, these losses from the individual employees.  
10 Therefore, these damages are irreparable." Now, I say  
11 if you can, if there is a union that has funds and it  
12 can be sued, the Rights of Labour Act repealed, they  
13 can be sued for money damages would that replace the  
14 injunction in those circumstances?

15 MR. PAULIN: No, sir. I say to you  
16 that the only point, in fact the important point in  
17 the suggestion on pages 9 and 10 of this brief is  
18 confined only to the procedural aspects of it. There  
19 is no doubt when an action is commenced for picketing  
20 and damages that the true defendant is really the  
21 trade union.

22 THE COMMISSIONER: I was going to  
23 ask you about that. Which union would you bring into  
24 the action?

25 MR. PAULIN: Well, usually, sir, it  
26 is not difficult to know which union it was. For  
27 example, in the Hanover Kitchens case there was no  
28 doubt whatever which trade union it was.

29 THE COMMISSIONER: Let us assume that  
30 is a local union or something, what would be necessary





1 to enable you to hold that higher union or parent union  
2 responsible?

3 MR. PAULIN: The international?

4 It would depend, sir, I think, on the actions of the  
5 international's officers.

6 THE COMMISSIONER: You think you could  
7 do it that way?

8 MR. PAULIN: I would try to do it  
9 that way.

10 THE COMMISSIONER: Is that the way in  
11 which they found the international union liable in  
12 Gaspe?

13 MR. PAULIN: You see, sir, the  
14 United Steelworkers always sign the collective agreement,  
15 never a local union: It is always the international.  
16 It is their policy.

17 MR. POLLOCK: I think we are not on the  
18 same wave length.

19 MR. PAULIN: I am avoiding your question  
20 as to asking me now to define what constitutes  
21 irreparable damages. I don't propose to deal with it  
22 if you don't mind because it is a very difficult and  
23 complex question.

24 MR. POLLOCK: If it is a situation  
25 of permanent loss, the plant burning down or anything  
26 like that, I could understand that, but if it is a  
27 question that we are losing money or losing some  
28 business and losing a contract that you can assess a  
29 value to, then those damages with respect are not  
30 irreparable.





1 MR. FERGUSON: I think I would like to  
2 ask Mr. Clark if he would give his views on this. Your  
3 question really is whether the right to sue a union  
4 would be an adequate substitute for the right to  
5 obtain an injunction.

6 MR. POLLOCK: If the purpose of the  
7 injunction is to prevent these "irreparable damages",  
8 these money damages, if that is the purpose of these  
9 injunctions, if it is not ---

10 MR. FERGUSON: Not physical damage.

11 MR. PAULIN: NO.

12 MR. CLARK: If I may, I have had an  
13 experience within the last year which I think would  
14 clearly demonstrate that the right to sue is not an  
15 alternative to the remedy by way of injunction. I had  
16 a situation where a union was on a lawful strike after  
17 the conciliation process and so forth, and although a  
18 request had been made to the union representative to  
19 permit outside contractors to repair a crack in the  
20 wall of the mine which was allowing water into the  
21 mine, the union representatives were sympathetic but  
22 quite frankly admitted they could not control the  
23 picketers. We delivered a letter to the union and to  
24 the chairman of the negotiating committee advising  
25 them that at a certain time we would apply for an  
26 injunction. We went to two local judges who refused  
27 to grant injunctions. Finally, the judge asked the  
28 union representatives to be at his chambers the next  
29 morning. He made that request through the employer and  
30 we conveyed that by letter. Still the union







1 representatives did not show up. It was a very  
2 responsible union. The judge himself then got in  
3 touch with the union representatives and pointed out  
4 to them the damage that could ensue. There were  
5 millions of dollars involved.

6 We did not get the injunction but the  
7 independent contractor was permitted in to make those  
8 repairs. I say in this situation the right to sue the  
9 union would clearly not be an alternative.

10 MR. POLLOCK: Absolutely no doubt.  
11 You are absolutely right in those circumstances, I  
12 agree. In the circumstances where we have not got a  
13 mine that is going to collapse because it is going to  
14 be flooded, in circumstances where we are dealing with  
15 the loss of business from a plant because it is closed  
16 down for so many months, so many days or so many weeks  
17 we can assess that easily in figures, at least you can  
18 in the circumstances if you and I have a contract and  
19 you are going to supply me so many goods so I can  
20 carry out other contracts and you fail in that  
21 contract I can't get an injunction to demand you.

22  
23 MR. POLLOCK: I can get damages  
24 against you and they can be assessed.

25 MR. FERGUSON: In most of the cases the  
26 are concerned with violence.

27 MR. POLLOCK: That triggers another  
28 thought in my mind. Somewhere you said that you don't  
29 want to proceed against these people under the criminal  
30 law because strikers are not criminals. Well, people





1 who are strikers and who are carrying out criminal acts  
2 in the sense of violence and burning things and  
3 breaking things are strikers plus criminals.

4 MR. FERGUSON: Well, Mr. Pollock, I  
5 would think that we are trying to restrain wrongful  
6 acts. There is no doubt about that.

7 THE COMMISSIONER: How would you  
8 define a crime?

9 MR. FERGUSON: We feel in many  
10 instances these people are being led by others. We do  
11 not think it is sound industrial relations that ranks  
12 a person as a criminal. In many cases these people  
13 have been directed on the picket line to engage in  
14 this type of activity.

15 MR. POLLOCK: To burn the plant down  
16 or to start a fight or to slash tires and break windows?

17 MR. FERGUSON: They have leadership.

18 MR. POLLOCK: Well, those people  
19 ought to be prosecuted as well.

20 MR. FERGUSON: In a violent set of  
21 circumstances I am sure that employers are tempted to  
22 do it, but, Mr. Pollock, the point is those people often  
23 come back and work for the employer and those people  
24 may be on the union committee, and if there is another  
25 alternative remedy available to the employer he will  
26 normally choose it.

27 THE COMMISSIONER: Isn't that itself  
28 an encouragement to repudiation of all law?

29 MR. FERGUSON: By not processing these  
30 things?







1 THE COMMISSIONER: Yes. By saying,  
2 "Oh, this is a rule but nobody wants to enforce it".  
3 I think you are playing the part to create the very  
4 condition you consider undesirable.

5 MR. FERGUSON: The employers have  
6 felt generally this is a matter of self-preservation,  
7 and they have felt, themselves, for instance, the  
8 trade unions sometimes have held these people up as  
9 martyrs to generate activities.

10 THE COMMISSIONER: That is true.

11 MR. FERGUSON: And they aggravate  
12 greater problems. Look what happened at Peterborough.

13 MR. POLLOCK: There was no violence  
14 at Peterborough.

15 THE COMMISSIONER: All I say is that  
16 you ought not to talk too much about the open flaunting  
17 of laws, because they are participating in the action  
18 that encourages such an attitude.

19 MR. FERGUSON: They have other remedies  
20 available to them.

21 THE COMMISSIONER: Yes, but they are  
22 putting their personal interests above the public  
23 interest. Now, a criminal --- there is a requirement  
24 of law there that is violated --- that is all it is  
25 accompanied by punishment. It does not lie with us to  
26 say "This particular offence is minor and we can  
27 disregard it". We think it is serious. It really  
28 comes from the idea that crime has something inherent  
29 in the quality of the act. Well, that is not so.

30 MR. FERGUSON: As a lawyer I cannot





1 disagree with you, sir, but employers have felt ---  
2 many of them have felt because of self-interest, I  
3 suppose, in industrial relations that these people  
4 are going to be returning to work for them and they  
5 are reluctant to take proceedings which brand these people  
6 as criminals. Whether it be right or wrong, this has  
7 been an attitude of many employers.

8 THE COMMISSIONER: I would like to  
9 get the details of that incident of which you spoke.

10 MR. FERGUSON: The law enforcement  
11 people themselves do not encourage employers to become  
12 involved in criminal proceedings, and law enforcement  
13 officers like to leave labour matters alone. They  
14 won't touch them with a ten-foot pole.

15 THE COMMISSIONER: Well, that is true.  
16 Policemen are well acquainted with the strikers and  
17 they may be neighbours.

18 MR. FERGUSON: The employer feels so  
19 often that law enforcement becomes involved and  
20 prosecutions under the Criminal Code, and I think his  
21 attitudes are influenced by the fact that law  
22 enforcement officers do not become involved in labour  
23 matters unless they have to, and therefore he, the  
24 employer, should not become involved in criminal  
25 prosecutions.

26 THE COMMISSIONER: But that is not  
27 present, say, in England. I am sure you read two or  
28 three months ago that there was a strike, I think it  
29 was at the Ford plant, where the police battled them  
30 for two or three hours. There were 300 policemen,





1 according to my recollection.

2 MR. FERGUSON: This has been generally  
3 so in the Province of Ontario, and I think part of it  
4 stems from the fact that they do not always have an  
5 adequate number of policemen to deal with the problem.  
6 I am not critical of them. I know they have not enough  
7 officers in many cases to even deal with the problem.  
8 They do not have people who are adequately trained to  
9 deal with it. I believe they have been reassessing their  
10 position.

11 MR. POLLOCK: You would not quarrel  
12 with the inclusion of the provisions in the Taft-  
13 Hartley Act which, for example, made it a condition  
14 on the application to receive an injunction that you  
15 had at least attempted to obtain the assistance of the  
16 police authorities?

17 MR. FERGUSON: And that it was not a  
18 factor.

19 MR. POLLOCK: Yes.

20 MR. FERGUSON: I don't believe we  
21 would object to that, but we would like to be in a  
22 position of asking for the protection and getting a  
23 lot more cooperation instead of resistance, which we  
24 are getting today, and which causes some concern for  
25 us because we appear to be talking in a foreign  
26 language to people who do not want to become involved  
27 in any matter of violence when it involves labour  
28 matters. This is what worries us a great deal and,  
29 as you know, we are in a difficult situation in some  
30 areas. The local police authorities will not --- they







1 are reluctant to call in the Ontario Provincial Police  
2 for assistance. For political purposes they will not  
3 do it. The Ontario Provincial Police, on the other hand  
4 will not go unless they are called. The employer is  
5 right in the middle of the situation. Certainly, well  
6 trained police authorities could deal with many  
7 instances and I am sure both employer and unions would  
8 be happy with it because we recognize that sometimes  
9 people engaged on a picket line get far out of control,  
10 not only of the employers' wishes but also their own  
11 people.

12 THE COMMISSIONER: Do you think the  
13 picket leaders should be confined to the leaders of the  
14 striking union?

15 MR. FERGUSON: To employees of the  
16 employer, you mean?

17 THE COMMISSIONER: Yes.

18 MR. FERGUSON: I have no doubt that  
19 the local authorities would be much more effective to  
20 deal with a picket line if these people were confined  
21 to those persons who were employees of the employer,  
22 but we know of many occasions where outsiders have  
23 been brought in, and no control exists.

24 MR. POLLOCK: It may be that the  
25 obverse of that coin may be that the outsiders may not  
26 be so incensed or so enraged by seeing a strikebreaker  
27 sitting in the seats of the other employees because  
28 they are not their seats.

29 MR. FERGUSON: We found generally  
30





1 those were brought in from outside who had sufficient  
2 experience to not be naive about what goes on in a  
3 strike and who is a strikebreaker and so on.

4 THE COMMISSIONER: They would find  
5 the people now who would be sophisticated strikers.

6 MR. FERGUSON: Yes, sophisticated  
7 strikers.

8 MR. POLLOCK: Just one last question  
9 on the law enforcement procedures. In some ways the  
10 employer, I suppose, finds himself in the same  
11 position as the wife who has laid an information  
12 against her husband because he has come home and  
13 beat her up and then on Monday she is there in court  
14 withdrawing the information. The police authorities  
15 look at that with a jaundiced eye. If, on settlement,  
16 the employer had not participated in the practice of  
17 saying, "All right, let us forgive and forget the fact  
18 that you beat up my car and beat up my children, we  
19 will forget about that", just to get the settlement,  
20 it might encourage the police authorities to press on  
21 with their investigations knowing there is going to be  
22 some eventual culmination.

23 MR. FERGUSON: I think you are right.  
24 I think at the time of a settlement the employer wants  
25 to let bygones be bygones. He wants to get the  
26 employees off the hook. He wants to get off the hook  
27 himself. He does not want to become involved in  
28 further proceedings.

29 THE COMMISSIONER: Really isn't it  
30 a shame that he doesn't have a more vivid imagination







1 at the beginning?

2 MR. FERGUSON: It may well be, sir.

3 It is the fact, though, that he does not want to see  
4 any alternative proceedings instigated at a later date.

5 THE COMMISSIONER: Well, gentlemen,  
6 we are very much obliged to you for the benefit of  
7 your experience and that is what these statements  
8 really amount to. As a result of the  
9 attention which you have given to this matter. Thank  
10 you very much.

11 MR. FERGUSON: Thank you, very much,  
12 sir, and if at any time we can supply any additional  
13 information to you and Mr. Pollock, we would consider  
14 it a privilege to do so.

15 THE COMMISSIONER: You just feel  
16 free to let us have any information of any kind.  
17 The Commission is adjourned until tomorrow morning at  
18 ten o'clock.

19  
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22 --Adjournment.  
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